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COUNTY GOVERNMENT AND ADMINISTRATION

THE CENTURY
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PREFACE

This volume may be considered as an outgrowth from a briefer study on *Local Government in Counties, Towns and Villages,* by one of the present authors, which was first published in 1906. The present work is about three times the size of the earlier book; and this difference gives some indication of the developments in this field, and of the more intensive treatment of the subject. This is due, in the first place, to the increasing importance of county government, both in the scope of its older functions and in the notable expansion of activities in new directions. This development is reflected in the greater volume of statutory legislation and in the increasing number of judicial opinions on legal questions brought before the courts, which have been carefully examined and analyzed. A second factor is the attention given in the present study to the administration and operation of governmental activities in various fields. This has been made possible by material in a considerable number of detailed studies on local government in particular states, in the reports of numerous agencies of the national and state governments in particular fields of public administration, and in the printed official reports of a considerable number of local authorities. The list of bibliographical references gives some indication of the material now available for still more comprehensive and intensive studies in this general field.

From this study there emerges the outstanding conclusion of the increasing importance of county government in the United States, not only in comparison with the smaller units of rural local government, but also at a faster *rate* of increase than the urban municipalities. The increasing scale of county finances and the steady expansion of county activities make an understanding of this part of our governmental system much more important. Even in the larger urban communities many of the problems of local government lie within the field of county rather than city government; and some of the most difficult problems of metropolitan government have to do with the relations of the city to the county or to the larger urban region.

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Several chapters have been given to the smaller units of local government other than cities. The New England town continues an active and important agency, mainly because many of these towns are in effect smaller cities. The township of the Middle West is of declining importance; and in Oklahoma more than half of the counties have abandoned township government. On the other hand town governments have been established in two counties in the state of Washington. The increasing number and variety of special districts, and the continuing increase of small villages also receive attention.

In this volume, the historical chapters are much the same as in the earlier study. In several other chapters, much of the material from the former book has been combined with new data. The development of state supervision is discussed in general in one chapter; and in more detail in the series of new chapters on special branches of county administration; while the activities of the national government in some fields of local administration are also noted.

Both of the authors have combined their efforts in all parts of the present study, though some chapters are more largely the work of one or the other. A few sections have been published, in substantially their present form, as articles in the *American Political Science Review*, the *Michigan Law Review*, the *Minnesota Law Review*, and *Public Management*.

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PART I

HISTORICAL DEVELOPMENT

COUNTY GOVERNMENT AND ADMINISTRATION

CHAPTER I

LOCAL INSTITUTIONS IN ENGLAND[1]

LOCAL government in the United States has developed from institutions established in the colonies, which institutions were in many respects similar to those existing at the time in England. The origin and early history of these English institutions are difficult to trace. In some features the later Anglo-Saxon system bears analogies to the Germanic system in the first century A. D., as described by the Roman historian, Tacitus, and it seems probable that the one developed from the other. But in the historical records there is a long gap which makes it impossible to describe the process of evolution. Also there are questions as to the extent of early Roman influence on the development of institutions in England during the first centuries of the Anglo-Saxon period. It will be sufficient for our purpose here to sketch briefly the growth of English local institutions from the time when they can be clearly understood, in the latter part of the Anglo-Saxon period, describing somewhat more at length the system of local government existing at the time of the first settlements in America.

ANGLO-SAXON INSTITUTIONS

When in the ninth century the various Anglo-Saxon kingdoms had been united in the kingdom of England, the country was divided for purposes of local government into shires, these into districts, known as hundreds, and these again into townships. The township, whether a development from the so-called Teutonic mark, or from the Roman villa, was a social and economic, rather than a political, district. It was a small rural community composed mainly of peasants. Local affairs were managed by an assembly of the inhabitants, who elected a president, known as the town-reeve, a tithing man, constable, and four men, who with the reeve and priest represented the township in the courts of the hundred and the shire. After the organization of the Church, parishes had also been established, usually coterminous with townships; and ecclesiastical affairs were managed by a similar assembly of inhabitants under the name of the vestry.

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[1] Charles A. Beard, *The Justice of the Peace;* Edward Channing, *History of the United States,* vol. 1 (1923), ch. 15, pp. 421-26; E. P. Cheney, *European Background of American History;* D. J. Medley, *Manual of English Constitutional History* (6th ed.); William Stubbs, *Constitutional History of England.*

The hundred was a district of varying size composed of a number of townships. Here the management of affairs was in the hands of a court held monthly, composed of all individual landlords within the district and the representatives from the various townships noted above. As executive officials there were a deputy of the shire-reeve, an elected hundreds-ealdor, and (at any rate towards the close of Anglo-Saxon times) a standing committee of twelve senior thegns. The main functions of this court were judicial in character, including both civil and criminal jurisdiction. In theory justice was administered by the whole body of lawful attendants or suitors at the court; but in practice this function fell very largely to the committee of twelve, whose further duty it was to present persons accused of more serious crimes in the shire court. Twice a year the sheriff held a "tourn" of the hundred courts.

Above the hundreds were the shires. These were, in the south and extreme north, the districts of older kingdoms or distinct bodies of the Teutonic peoples which retained certain features of self-government after their absorption into the larger kingdom. In the Midlands the shires were artificial districts created for convenience of administration. Whatever its origin, the affairs of each shire were managed by a semi-annual court, composed of the representatives from each township and the individual landowners, though later the place of the latter may have been taken by the twelve senior thegns from each hundred. The principal function of this court, as in the hundred, was the administration of justice.

The initiative and active control of business rested in three officials: the ealdorman or earl, the shire-reeve or sheriff, and the bishop. The ealdorman represented the extinct royalty of the earlier kingdoms; and although later nominated by the King, he retained much of the dignity suggested by the origin of the office. Several shires were grouped under each ealdorman, who was preëminently the leader of the military forces. The sheriff originally had been the steward of the royal estates and chief representative of the Crown, but became also the president and chief executive of the shire court. In ecclesiastical cases, however, the bishop presided over the court.

AFTER THE NORMAN CONQUEST

After the Norman Conquest the earls retired from the active administration of shire business, and the position became merely a title of nobility and dignity. At the same time the separation of civil and ecclesiastical jurisdiction led to the disappearance of the bishop from the shire court. These changes paved the way for the supremacy of the sheriff in the county, as the shire came to be called. This officer became the King's representative in military affairs; as police magistrate he was responsible for maintaining the peace and supervising the elaborate system of securities for good behavior; as steward of the royal estates, his financial powers were increased; and for a time his judicial functions gained in importance with the development of the shire court and the decline of the hundred court. The jurisdiction of the shire court was extended, and its sessions became more frequent, until they were held as often as once a month. This led to a falling off in attendance of the local representatives, with a corresponding increase in the influence of the sheriff. Criminal courts in each hundred were also held by the sheriff twice a year. In fact the sheriff became the chief agent in a strongly centralized prefectoral administration.

Another result of the Norman Conquest was the development of feudal manorial courts, at the expense of the hundred courts. Even in Saxon times many thegns had judicial jurisdiction within their estates, covering one or more townships; and these were exempt from the hundred court. This system was now extended with other features of the feudal régime. In each manor, courts or assemblies for the inhabitants were held, different sessions being known as the court customary, the court baron, and the court leet. Here, as in the hundred and shire courts, the judgments were rendered by the whole body of attendants, but under the supervision of the lord's steward, who occupied in a smaller way a position similar to that of the sheriff in the shire court.

Arbitrary exercise of his enormous powers made the sheriff an unpopular official, and at the same time the tendency for the office to become hereditary in powerful local families caused it to be distrusted by the Crown. As a consequence, his authority was gradually reduced by the development on the one hand of the itinerant royal courts, and on the other of the justices of the peace, until he became simply a ministerial officer of the courts, a conservator of the peace, and returning officer in elections.

Special royal commissioners had occasionally been sent throughout the kingdom from the time of Alfred. A regular system of circuit judges was established under Henry I; and under Henry II this developed into the common law courts, which took over the most important judicial business from the sheriffs and the shire courts.

JUSTICES OF THE PEACE

During the thirteenth century peace officers of a new type were appointed from time to time, with executive police powers of rather more importance than those of the old constables. Those appointed were landowners, who served without salary. In the reign of Edward III judicial powers were given to these magistrates; and in the next century many of the functions of the sheriff were transferred to the new justices of the peace; in other respects they replaced the manorial courts, while still more powers were added. Most of the remaining jurisdiction of the shire court was transferred to the quarter sessions of the justices, and the former remained in existence mainly for the election of coroners and members of Parliament. The hundred as an administrative district almost disappeared. The old local officials—sheriffs, coroners, constables, and manorial bailiffs—became the servants of the justices and often their nominees. The justices at their quarter sessions also constituted the fiscal board of the shire, which assessed, levied and managed the expenditures of county funds and maintained county roads and bridges, prisons and public buildings.

THE TUDOR PERIOD

The fifteenth century was a period of notable constitutional development, but of increasing administrative disorder. It was the task of the Tudors in the following century to establish order, and in this process important changes were made in the system of local government. There was a further development in the powers of the justices of the peace, with other changes in county government; and at the same time the establishment of new organs of local government in the parishes made the town of much greater relative importance than before.

Additions to the authority of the justices may be noted in three directions: They became charged with the duty of preliminary investigations in criminal cases of all kinds. They were given control over the administration of a vast mass of statutory police legislation, both old and new, including laws against vagabonds and beggars, the regulation of wages, apprenticeship and prices, licensing beer-houses and other trades, and, after the Reformation, ecclesiastical laws against papists and nonconformists. Lastly they were given important powers of supervision over the newly established parish system, in reference to police matters, poor relief, highways and local taxation. These, with their former powers, gave the justice of the peace the position well described as " the state's man-of-all-work."

Other changes in county government affected the militia system, the local administration of which was placed in the hands of a new official, known as the lord-lieutenant. Most of the important judicial business was now in the hands of the royal judges, although the sheriff's county court and in some places the manorial courts lingered on as decaying institutions.

While in earlier times the township had never been an important unit of civil administration, on its ecclesiastical side the parish had an active and a continuous existence. With the separation from Rome, the priest was replaced by the rector as the ecclesiastical head of the parish, assisted in financial matters by two churchwardens chosen by the parish vestry—which had the power to levy a local tax or church rate for the maintenance of the church property.

This ecclesiastical organization was now made the basis of a distinctly civil administration. Under Mary, the parish vestry was authorized to elect a surveyor of highways, and levy a highway rate; but local roads continued to be maintained for the most part by a labor tax. Poor relief had always been considered an ecclesiastical affair, administered through the parish or in later times largely by the monasteries. But the dissolution of the monasteries and economic changes made necessary a new system; and a long line of Parliamentary statutes, beginning in the reign of Henry VIII and culminating in the Poor Law of 1601, definitely established a system of parish taxation for the care of the poor, to be administered by the churchwardens and a new class of officials, known as overseers of the poor. It may also be noted that whatever was done in the way of popular education was also done through the parish officials, but this was as yet considered a purely ecclesiastical matter.

As has been seen, the parish officials in the exercise of these new functions were placed under the active supervision of the justices of the peace. The justices, in turn, and other executive officers, were controlled in all their functions by statutes of Parliament enforced by the royal judges. An active administrative control was exercised by the Privy Council; and, as a further means of central control, sheriffs, justices and local executive officers, down to village constables, were subject to dismissal from office.

THE SEVENTEENTH CENTURY

Few changes of importance were made in English local government under the first two Stuarts, and those made can best be noted in a description of the whole system as it existed in the early part of the seventeenth century, at the time when the first permanent English settlements were being made in America.

At the head of the county or shire at this period were two officials, the sheriff and the lord-lieutenant. The sheriff was the more important and was still an official of considerable power and much dignity, although the requirement of constant residence in the county and the expenditures made necessary by law and social customs were heavy burdens. Sheriffs in most cases were chosen by the Crown, each from a list of three, selected by the Privy Council, and by law the same man could not be appointed for two successive years. The duties of the sheriff were many and varied. Each month he held a county court for small civil cases, although this was a fast-waning institution. He presided also at the sessions of the county court for the election of members of Parliament, and here often wielded considerable influence on the result. At the semi-annual assizes of the royal judges, the sheriff summoned juries, executed the judgments of the courts, had charge of the jail and acted as local host to the visiting representatives of the Crown.

More dignified was the position of lord-lieutenant, which in some degree revived that of the Anglo-Saxon earl. This post was usually given to the highest nobleman with estates in the county, and incumbents were not frequently changed. It was the main duty of the lord-lieutenant to supervise the local militia, which was called into service to suppress riots and the like, but other duties were added under the Stuarts.

Much less dignified and less powerful than either of these was the ancient office of coroner, filled by election in the county court. The functions of this office were now mainly confined to the duty of investigating sudden deaths, and binding over for trial those indicated by the inquest jury. As a survival of his former importance the coroner under some circumstances took the place of the sheriff.

But the real work of county administration was now performed by the justices of the peace. There were from twenty to sixty of these in each county, chosen by the lord chancellor from the rural gentry. They were usually men of good family and property and of some ability, who discharged the burdensome duties practically without pay, but were recompensed by the social dignity and sense of authority conferred by the office.

The powers and duties of the justices of the peace were so multifarious as to defy classification or simplicity of statement. A writer of the time names 293 statutes passed before 1603 in which justices are mentioned and given some jurisdiction and duties; and 36 more were added in the reign of James I. Legal textbooks on the subject required 500 or 600 pages to enumerate the list. Some of their functions were performed by individual justices, others by two or more acting jointly, and the most important by the justices in each county in their regular quarter sessions, held four times a year.

At the quarter sessions all of the justices in the county were presumed to attend, but in practice attendance was irregular and incomplete. At least one justice present had to be from those known as the ''quorum,'' presumably those learned in law. There had also to be present the *custos rotulorum*, or keeper of the rolls, who was apt to be the lord-lieutenant; but he was usually represented by a deputy. Others present included the sheriff or his deputy, the jailor with his prisoners, the high constable and bailiffs, the coroners, jurors, and all persons committed for trial.

Primarily the quarter session was a court of criminal jurisdiction for the trial of all but the most petty and the most serious crimes. It was also the administrative board for the county, charged with the care of roads and bridges, county property and the levy of county taxes.

In petty sessions of two or more, the justices also performed both judicial and administrative functions. They had summary jurisdiction in petty cases, and single justices committed accused persons to trial before the higher courts. They granted licenses to ale-houses, regulated wages and apprenticeship, and punished ecclesiastical recusants. They were frequently called on to give special relief or to take other action in emergencies; while, in addition, they were constantly subject to the instructions of the Privy Council, whose communications became more frequent and more drastic from the end of the sixteenth century.

Some important functions which later came within the sphere of civil administration in America were under the control of the ecclesiastical courts, held in each diocese by the bishop or a judge ordinary appointed by him. These included substantially all matters connected with marriage and divorce, the proof of wills, the granting of letters of administration and of guardianship, and the administration of personal estates.

The hundred had become the least important administrative division. The sheriff continued to hold a desultory semiannual "tourn" in each hundred, and the district was also used for the purposes of taxation, military organization and in the maintenance of peace. The high constables, chosen annually at the quarter sessions, were the only officers of the hundred.

For the smallest administrative district the use of terms was confusing and often indiscriminate. Town or township was the most general term, applying either to manor or parish. Manors, with their special privileges and duties, were becoming obsolete; but courts leet and courts baron continued irregularly in a few places. The parish was now the most usual name for the smallest unit of local government; and the development of its functions, already described, made it a district of some importance.

The most active officer of the parish was the constable, chosen in some places by the steward or lord of the manor, elsewhere by the court leet, by the vestry, or by the justices of the peace. Although charged with a long list of duties as peace officer on his own initiative, practically the constable was now simply the agent or instrument of the justices, for making arrests and executing warrants and judicial sentences, for collecting taxes, or for other purposes.

Other parish officials of importance were the churchwardens chosen at a vestry meeting of the parishioners in Easter week of each year. They levied the local taxes imposed by the justices and those for parish purposes and were often ex officio overseers of the poor. A vestry clerk existed in some parishes, the prototype of the American town clerk. And there were many other petty officers, such as beadles, sextons, haywards, ale-conners, way-wardens, sidesmen, synodmen, and questmen.

These parish officials were drawn from a lower social rank than the gentry who filled the posts in the county government. The offices in the rural parishes were usually given to copyholders, small retailers, artisans, or even laborers. Their duties were simple and in most cases took but little time, so that, except for constables and a few others paid by fees, there was no payment attached to the offices.

It remains to describe the vestry meeting, or general assembly of the parish. All inhabitants were ordinarily entitled to attend these meetings—landowners, free tenants, copyholders, laborers, and even those who held land in the parish but lived elsewhere. But there is little evidence as to the actual practice. What records exist do not suggest an active assembly. The attendance consisted only of the more substantial members of the community and of the officers who had to present reports. The name vestry, taken from the small room where the meetings were held, indicates that only a few persons were usually present. Early in the seventeenth century it was customary to appoint in the open vestry a select committee to advise the parish officers, which suggests the selectmen of the New England towns. In England, however, in many parishes this committee came to fill vacancies in its own membership, and the select vestry—as it was called—became practically a ''close corporation,'' whose powers were later recognized as legal by prescription.

Urban communities, and even small villages, were organized as boroughs, or in a few cases, as cities, operating under royal charters, many of which dated from the Middle Ages. In most cases the borough government was controlled by a small number of persons. Frequently the council of mayor and aldermen was a ''close corporation,'' filling vacancies in its own membership. In some places aldermen were chosen by a limited class of freemen, and in some places by the local taxpayers.

The whole system of local administration was under the control of an energetic national government; the bulk of active administration was performed by the county officials drawn from the propertied classes, but acting largely under instructions from above; while at the bottom was the parish with indefinite, but unutilized, powers of self-government. It differed from the decentralization of the Anglo-Saxon period, from the feudal disorganization of the Plantagenet era, and also from the extreme centralization under the Norman kings. In form, it was highly centralized, with sheriffs and justices appointed by the central government, and under the active supervision of the Privy Council. But the hierarchy of control was not systematically organized, as it might have been had the former authority of the sheriff been revived. Moreover the local officers, instead of being trained and salaried, were usually unpaid, and the most important were drawn from an independent class—the rural gentry—while the traditions of the offices went back to a time of large local autonomy.

Such were the local institutions with which the English colonists in America were familiar; and as was natural, most of them were introduced in the new colonies. But different conditions led to many important changes. The central government of England could not exercise direct control over minor officials at such a distance, and indirect control through the colonial governors was very ineffective. Some of the most important functions of local government in England, such as poor relief, were of little importance in the colonies. Other functions, such as education, became important. The class of rural gentry did not appear in many colonies, and even with similar laws a different class of officials appeared. As time went on additional changes were introduced from various causes. But the development of American local government is a continuous process from the English institutions of the first part of the seventeenth century.

CHAPTER II

LOCAL GOVERNMENT IN THE AMERICAN COLONIES

In the European settlements established within the limits of the thirteen colonies, there was at first no distinction between the local and central government of each colony. But as population increased and spread over a larger area, special local institutions became necessary; and those established were naturally similar to those of the mother country. There were, however, important modifications of the English institutions almost from the beginning; and other changes developed during the colonial period.

VIRGINIA AND MARYLAND

Virginia followed the English system most closely. The first subdivisions of this colony were styled plantations and hundreds, but there was no revival of the organization of the old English hundred. These early districts soon became *de facto* parishes; and before long the latter name became the more common, and new parishes were established from time to time. Each parish, as in England, was both an ecclesiastical and civil district, with a vestry, minister and churchwardens for the management of local affairs. The vestry consisted usually of twelve "selected men," chosen at first by the parishioners, though later the practice of coöptation became established, as in the "select vestry" of England.

On the large scattered plantations which physical conditions made the economic unit in Virginia, many local matters were attended to by the owners; there was little opportunity for political activity; and before long the parish was overshadowed by the county as a district for local administration. In 1634 the colony was divided into eight shires, and new shires or counties were gradually organized. The county became the unit of representation in the colonial assembly, and also the unit of military, judicial, highway, and fiscal administration. The officers were the county lieutenant, the sheriff (who acted as collector and treasurer), justices of the peace, and coroners. All were appointed by the governor of the colony on the recommendation of the justices, and the latter thus became a self-perpetuating body of aristocratic planters controlling the whole county administration. The justices appointed the clerk of the monthly county court, who acted also as recorder of deeds; and each county had also a land surveyor, appointed by the surveyor-general of the colony.

Maryland was originally organized for purposes of local government, like the county palatine of Durham in England, with hundreds and manors as the subdivisions. But in 1650 three counties were established; and new counties were organized from time to time. The hundred was continued as a subdivision of the county, and new districts of this name were organized for election, fiscal and military purposes. The erection of manors also continued until towards the close of the seventeenth century, but very soon after the transfer to a royal province the counties were subdivided into parishes. And during the eighteenth century a number of towns were created by special acts.[1] Thus, while the organization of hundreds and manors delayed the development of counties and parishes in Maryland, toward the end of the colonial period the local institutions tended to become more nearly like those in Virginia.

Outside of Maryland, hundreds and manors had little permanent influence on local government. The name hundred appears in the early records of Virginia and Maine; and was permanently established in Delaware, where this district was in fact a modified township. Manors were established in New York, and were provided on paper for Carolina.

NEW ENGLAND COLONIES

In New England the primary unit of local government was the town, although the county was also organized as in England. The notable development there of the town was due to various causes. It has been described as a revival of early Germanic and Anglo-Saxon institutions, and analogies can be drawn in many features. But the historical connection is through the later English parish and manor, and there is no evidence of conscious imitation of older institutions. The recurrence of primitive conditions explains the reappearance of some similarities, but a more important factor was the system of settlement in compact communities (partly as a means of protection against Indian attacks) by groups of landed proprietors, each of which formed at the same time a church congregation; while an underlying cause was the social philosophy of the Puritans, which affected alike their economic, ecclesiastical and political organization.

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[1] N. D. Mereness, *Maryland as a Proprietary Province*, ch. 6.

The New England town has been described as a manor without a lord. But its activities included those of the English manor, the civil functions of the parish and many others. In addition to maintaining highways and caring for the poor, it supported public schools, regulated private business in minute fashion, and was the unit for the assessment and collection of taxes, for militia organization, and for representation in the colonial assemblies, and in some colonies, also for land records and judicial purposes. In most of the New England colonies some of the towns were older than the central government; and in Connecticut and Rhode Island the latter was considered more as a federation of towns than as a superior sovereign authority. At the same time, the general court of each colony exercised control over the institutional development of the towns, and to this is due much of the uniformity of system which prevailed. Town by-laws were subject to approval by the county justices, and towns could be fined or otherwise punished for failure to perform duties assigned by law.[2]

Control of town affairs was in the hands of the town meeting, held annually and at other times as deemed necessary. Each town meeting organized itself by the election of a moderator. At the annual meeting a long list of town officers were elected; but these were limited by the appropriations made, taxes levied, and by-laws passed by the town meeting, which thus retained an active supervision over every branch of local administration. The meeting resembled the assembly of freeholders and tenants in the manorial courts, without the presence of the lord's steward. It was clearly more democratic than the ''close vestry,'' and probably was more democratic in practice than the open vestry.[3]

In England and Virginia large landed estates and the Episcopalian Church system encouraged the rule of a small class, while in New England the small freeholders and Congregational Church system promoted a more popular participation. At the same time, even in the New England towns there were leading families which exercised a large measure of influence in town affairs.

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[2] Anne Bush MacLear, *Early New England Towns* (Columbia University Studies in History, Economics and Public Law, vol. 29). John F. Sly, *Town Government in Massachusetts* (1930), chs. 1-4.

[3] Town meetings were of different kinds: those of the freemen who had full political power, and those of all the inhabitants. Common fields and town commons were controlled by the land owners, who in later times formed only a small part of the population.

Most important of the town officers were the selectmen or townsmen, a committee of three to thirteen members, annually elected at the town meeting. This feature of the town government seems to have been a development from the committee or "selected men," which formed a stage in the evolution of the select vestry in England and Virginia. But the New England selectmen were an executive body for the town meeting, and never became a close corporation, taking the place of the open meeting of all the inhabitants. Even where the same persons continued to fill the office from year to year, they were regularly elected at the town meeting, which issued instructions and formed an active center for discussion of their actions. In Rhode Island the body corresponding to the selectmen was known as the town council.

For the most part the functions of the selectmen were regulated by the town meeting; and on this account their duties were so varied that exact statement is impossible. Nearly everything that could be done by the town meeting was at times performed by the selectmen. In general they were "to manage the prudential affairs of the town." More specifically, they conducted the financial administration, acted as legal agents of the town, had charge of the common lands, summoned the town meeting, and acted as election officers. At times the selectmen appointed minor town officers, and even assessed taxes and enacted by-laws, under authority from the town meeting. To some extent duties were imposed by the general court or assembly of the colony; and they were in this way made direct agents of the central government and in a slight degree of the English Crown. Thus in Connecticut and Plymouth they were given judicial powers; and in Connecticut and Rhode Island they had probate jurisdiction.

A constable was a necessary officer in every town; but in New England he was preëminently the agent of the town meeting, and freed from the active tutelage of the justices of the peace. Of more importance and higher social rank was the town clerk, who far surpassed his prototype, the English vestry clerk. He was not only secretary to the town meeting and the selectmen, but also a register of deeds and a recorder of vital statistics. Other officers of some importance were the treasurer, assessors, collectors, surveyors of highways, fence viewers and clerks of the markets. Besides these a long list of additional petty functionaries were chosen, such as hog reeves, field drivers, pound keepers, overseers of the poor, tithing men, town criers and many others. Not all of these were chosen by every town; but the list in each case was numerous enough to give a public position to a good proportion of the inhabitants.

In emphasizing the development of the town, many writers have neglected or ignored the county as a local government district in New England. But in Massachusetts the county was early established and became an important institution, which influenced the development of the county system throughout the country. In the neighboring colonies counties were also organized, at least for judicial purposes.[4]

The first steps in the development of the Massachusetts county were taken in 1636, when the colony was divided into four judicial districts, in each of which a quarterly court was provided. At the same time three militia districts were created. In 1643 four shires or counties were definitely organized, both as judicial and militia districts; and additional counties were afterwards established. Local magistrates for the county courts and town commissioners for trying petty cases were at first appointed by the general court; but after 1650 they were nominated by local election, subject to the approval of the higher authorities.

Fiscal administration was also of some importance. While the town was the primary unit for the assessment of taxes, there was established before 1650 a system of representative commissioners from each town, who met at the shire town to equalize the apportionment of taxes between the various towns—a plan which foreshadows the boards of supervisors that later developed more fully in New York. Since as yet there was no sheriff, the elective office of county treasurer was created in 1654, to look after fiscal affairs.

Other county functions and officials were soon added to these. The county was a militia district; but in place of an appointed lieutenant, the chief militia officer in each district was made elective. The county became further the district for the system of registering land titles, which had been originally established as a duty of town officers. In 1642 it was enacted that the clerk of every shire town should record deeds; and later the county clerk was given the additional title of county recorder. In the absence of the ecclesiastical courts of the Anglican church, probate duties became a function of county administration. This jurisdiction was at first vested in the governor and council; but in 1652 the clerks of the county courts were made registers of wills, and in 1685 the county courts were authorized to act as probate courts.[5]

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[4] G. E. Howard, *Local Constitutional History*, Part III. ch. 7.

Minor changes were made in this county system from time to time; and under the provincial charter of 1691 there was a general reorganization more on the lines of the English system. Sheriffs, justices and militia officers were henceforth appointed by the governor or the general court; and, as in England, the justices exercised administrative as well as judicial functions, acting singly and in petty and quarter or general sessions. The justices also had some supervision over the town officers and the joint meetings of town commissioners for equalizing taxes. For the trial of civil cases four justices in each county were named as an inferior court of common pleas.

In three of the other New England colonies the development of the county was largely influenced by Massachusetts. New Hampshire was under the jurisdiction of that colony from 1641 to 1679, and Maine after 1652; and the county system was applied to these districts. Plymouth in 1685 was divided into three counties, and in a few years these became part of Massachusetts.

Connecticut first established county courts, with judicial and probate jurisdiction, in 1666, soon after the charter uniting New Haven and Hartford. Each court was held by one of the assistants and two commissioners appointed by the general court, but the term justices of the peace was introduced in place of commissioners by Governor Andros, and continued in use thereafter. In connection with these county courts there developed an important change in methods of criminal prosecution, which has extended throughout the United States. In England there had been no system of local prosecuting officers, but the magistrates in Connecticut assumed the power of investigating crime; and in 1704 there was authorized for each county an attorney "to prosecute all criminal offenders . . . and suppress vice and immorality."[6] From this has developed the important American office of prosecuting attorney, which exists under various titles in all of the states. In

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[5] Extracts from the Massachusetts Records, in C. D. Wright, *Public Records of . . . Massachusetts*, pp. 365, 370.

[6] Hammersley, "Connecticut Courts," in *The New England States*, I, 489.

Connecticut the county was used in militia as well as judicial administration; but as a whole it was of less importance than in Massachusetts.

Not until 1703 were counties organized in Rhode Island, and in this colony they served only as judicial districts.

THE MIDDLE COLONIES

In the Middle colonies, the early Dutch settlements established by the "patroons" were manors, similar to the feudal institutions of Continental Europe. But a little later there grew up a number of self-governing village communities along the Hudson and on Long Island. After the English conquest of New Netherlands, in 1664, a system of local government was prescribed by the "Duke of Yorke's Laws," which combined features of the English and New England system with some novel developments. Existing institutions and customs were recognized by making the town the basis of local government. Here authority was vested in a constable and several overseers, who were elected by the freeholders, and had power to adopt by-laws, to levy taxes, and to act as executive and judicial officers. Two overseers were to act as churchwardens. There was a town meeting, but its functions seem to have consisted simply in the election of officers. At the same time, rudimentary counties were established. The name Yorkshire was given to Long Island, which was divided into three "ridings," as was the English county of that name. In each riding there was a court of sessions held several times a year by justices of the peace; and a high sheriff was provided for the whole district.

From Long Island where they were first applied, these provisions were extended with some amendments to other parts of New York, New Jersey and Pennsylvania. County courts were established in New Jersey in 1675, and courts of session for the settlements on the Delaware in 1676, the latter exercising fiscal and administrative as well as judicial functions. Towns were also organized in New Jersey, but as yet were of little importance, and in many regions the parish was the smallest unit of local government.[7]

A few years later the English county system was more definitely introduced. In 1682 new counties were established or old counties reorganized in New Jersey, Pennsylvania, and Delaware. A year later New York was divided into ten counties. For these were established the usual appointed sheriffs and justices, the latter having both judicial and administrative functions, while probate or orphans' courts were also provided in each county.

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[7] H. L. Osgood, *The American Colonies in the Seventeenth Century*, II, 285.

In 1691, following the establishment of an elective legislative assembly in New York, came a most important change in the local government of that province. This was the creation of elective county boards of town supervisors, which were to become the principal feature in the local institutions of leading states. This action at that time was the more striking in contrast to the contemporaneous legislation in Massachusetts, limiting somewhat the sphere of local elections. The new body established for New York counties consisted of a freeholder elected from each town to supervise, levy and assess the local taxes for county purposes. This did not do away with the justices of the peace, nor even take away at once all of their administrative functions; but, during the next half century, the latter powers were gradually transferred from the justices to the supervisors, and the justices remained with only judicial powers, which in turn were limited by the development of other courts.[8]

New Jersey developed a similar system. In 1693 provision was made for the election of town assessors to assist the justices in each county in the assessment of taxes; and from these were developed the county boards of chosen freeholders.

In Pennsylvania a special administrative county authority also developed, but the absence of strong town governments led to a different organization, which was to spread through a large part of the United States. Assessors to assist the justices in tax matters were provided as in New Jersey, at first chosen by the local members of the assembly, but after 1696 elected by the county at large. Nearly thirty years later the place of the justices in tax assessments was taken by three elected commissioners in each county, who became the chief county administrative authority, corresponding to the New York board of supervisors. Meanwhile, too, as early as 1705, the office of sheriff had, for the first time, been made elective, while in 1715 there had been established the new county office of recorder of deeds, filled by appointment by the governor.

Even without these changes the county in the Middle colonies would have been a more important administrative district than in New England. With the development of these elective officers, however, the county, which was also the district for electing members of the colonial assemblies, became the center of political activity. In New York and New Jersey the towns had important powers of local government and were recognized in the county organization. But in Pennsylvania the towns were of little importance, and the machinery and functions of town government were vague and indefinite.

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[8] J. A. Fairlie, *Centralization of Administration in New York State*, pp. 114, 151.

THE CAROLINAS AND GEORGIA

Active settlement in the colonies south of Virginia did not set in until the eighteenth century, and the development of an organized system of local government could come only after this had begun. Locke's Fundamental Constitutions for Carolina had provided an elaborate scheme; but this was never carried out, and the institutions established were for the most part similar to those of England.

In North Carolina justices of the peace and county courts with judicial, probate and administrative powers had been established before the colony became a royal province.[9] In 1746 the system was reorganized, and the county courts more fully developed. Quarterly sessions were to be held, and the system of public prosecutions, previously established in Connecticut, was introduced, a deputy attorney-general for this purpose being appointed in each county by the attorney-general of the province.[10] Counties were rapidly multiplied, and by 1765 there were thirty-two in the province.

South Carolina was divided into three counties as early as 1682; but although county courts were ordered to be established, there are no records of them, and all important cases were tried at Charleston. Justices of the peace for the arrest of offenders and the trial of small cases were, however, in existence by the end of the seventeenth century. In 1706 the province was divided into parishes for ecclesiastical purposes, each with a rector, seven vestrymen and two churchwardens. A few years later the care of the poor was given to the parish officers, and the parishes were made election precincts for members of the assembly.[11] But no strong local government developed under this system.

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[9] The records of a precinct court for 1688 have been preserved. Paul W. Wager, *County Government in North Carolina* (1928), p. 4.

[10] C. L. Raper, *North Carolina* (1904), pp. 160, 166.

In 1721, soon after the transfer of the province from the proprietors to the Crown, another act was passed providing for county courts. But as their jurisdiction was limited, and the judges were not trained in the law, the tendency still was for the central court at Charleston to absorb all business. The disadvantages of this became more pressing as the back districts became settled; but it was not until after a long struggle that an act providing circuit courts became law in 1769, and not until four years later that the courts were opened.[12]

There was less development of local government in Georgia during the colonial period than in any of the other colonies. The only court of general jurisdiction was held at Savannah, although justices for petty cases were provided after the transfer to the Crown in 1754. Parishes were erected in 1758 for ecclesiastical purposes, the care of the poor, and the election of members of the assembly, as in South Carolina. But the large element of dissenters in the population prevented the Anglican parish system from becoming an active center of local political life.[13] Counties were not organized until after the Revolution.

During the colonial period twenty-four urban communities were organized as cities or boroughs. These included New York, Philadelphia, Albany, and smaller places, mainly in Pennsylvania and New Jersey. These municipal corporations were similar to the English boroughs, but only three were "close corporations." [14]

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[11] Edward McCrady, *South Carolina under the Proprietary Government*, pp. 193, 447, 559, 693.

[12] Edward McCrady, *South Carolina under the Royal Government*, pp. 43, 642.

[13] C. C. Jones, *History of Georgia*, I, 465, 524; Stevens, *History of Georgia*, I, 391, 444.

[14] J. A. Fairlie, *Essays in Municipal Administration*, No. 4; T. H. Reed, *Municipal Government in the United States*, ch. 4.

CHAPTER III

UNDER STATE GOVERNMENTS

AFTER THE REVOLUTION

WITH the organization of state governments following the Declaration of Independence, there came some significant changes in American local institutions, but there was no radical revolution, and the main features of the old systems continued in the different states. Towns in New England and the Middle states and parishes in the Southern states remained unaltered; and in fact are not mentioned in most of the constitutions of the Revolutionary period. That of New Jersey is exceptional in specifying that constables should be elected in townships "at their annual town meetings for electing other officers"; and to this extent the township was given a constitutional basis.

More frequently the Revolutionary constitutions contained provisions about county government, and there were some important departures from colonial methods. In Virginia no change was made: as theretofore, county officers were to be commissioned by the governor on the nomination of the county justices; and this self-renewing system was established in the constitution. In Massachusetts, New Hampshire, and Maryland, the governor and council continued to appoint most of the county officers, but the justices were given a short definite term, while county treasurers and registers of deeds were elective as before. New York entrusted the selection of county officers, formerly appointed by the governor, to a council of appointment, consisting of the governor and four members of the state senate chosen by the assembly; while the supervisors continued to be elected in the towns.

Somewhat more striking changes were made in other states. Justices of the peace were to be chosen by the legislature in New Jersey, South Carolina and Georgia;[1] and were to be appointed on the nomination or recommendation of the legislature in Delaware and North Carolina. Definite terms were given to the justices in New Jersey and Pennsylvania, while they were to continue during pleasure in South Carolina and on good behavior in North Carolina. Sheriffs and coroners in New Jersey and sheriffs in Maryland were made elective; in Pennsylvania, two nominees for each of these offices were to be chosen by popular vote, one to be commissioned by the governor; while justices, commissioners, and assessors were directly elected.[2] The Georgia constitution established counties and county courts, and provided that all civil officers not otherwise provided for should be elected.

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[1] Also court clerks in New Jersey and registers of probate in Georgia. By the constitution of 1798, justices of the peace in Georgia were to be nominated by the county courts, thus establishing the same self-renewing system as in Virginia.

To summarize, it may be said that there was a distinct tendency in most states towards decentralization or an increase of local influence in choosing county officials, to be exercised mainly through the members of the legislature, and direct election of the old appointive officials was established in only a few cases. The right to vote for such officers or for members of the legislature was still restricted by a freehold or tax-paying qualification, except in Vermont. Perhaps the most important decentralizing measures, especially during the war with Great Britain, were the constitutional provisions in most states in regard to the militia. Company officers were elected by the enlisted men, regimental officers by the company officers, and only the highest officers were chosen by the governor or legislature.

As the tide of settlement moved westward, the local institutions of the older states were introduced in the new communities roughly following parallel lines of latitude. But sometimes in the earlier stages some of the more primitive institutions were revived for a time, while democratic tendencies often developed more rapidly in the newer states. In Kentucky, the Virginia county system had been introduced before the separation of the new state; and while the first constitution provided for elective sheriffs and constables, the second constitution in 1799 practically restored the older methods. All county officers were made appointive by the governor from double lists of nominations submitted by the county courts of justices of the peace. In Tennessee almost the same system was established, the county courts being given the power to appoint outright the sheriffs, coroners, and trustees (a novel title for the treasurer) as well as constables.

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[2] By the constitution of 1790 justices in Pennsylvania were made appointive by the governor. After 1792 sheriffs and coroners in Delaware were chosen by the popular nomination of two candidates, as in Pennsylvania.

THE NORTHWEST TERRITORY

In the Northwest Territory the development of local government was influenced more largely by the institutions of other states. Under the ordinance of 1787, the appointment of local officers was vested in the governor of the territory. In 1790 the first county was established and appointments were made to the offices of sheriff, coroner, treasurer, recorder of deeds, probate judge, and justices. At the same time provision was made for rudimentary townships, for each of which a constable, clerk, and overseers of the poor were to be appointed by the county court. The court of quarter sessions was also the fiscal and administrative board, as in the Southern states; but before the end of the century, county boards of three appointed commissioners had been created for the levy and assessment of taxes and the audit of claims.

Town meetings were instituted, but only for purposes of election; and each town was to elect a board of three or more trustees, a clerk, overseers of the poor, fence viewers, assessors, constables, and road supervisors. The geographical townships marked out by the rectangular land surveys of the national government provided the districts for new civil townships (except in the eastern part of Ohio); and the artificial nature of these areas has been an important factor in preventing the township in these regions from attaining the social unity and political importance of the New England town. Moreover, settlement was largely on isolated farmsteads rather than in compact communities; and this again hindered the development of strong township government.

As soon as Ohio was admitted as a state, in 1802, further changes were made in the county system. The local courts were reorganized; sheriffs, coroners, and justices of the peace were made elective; and in 1804 boards of elective county commissioners were established, with the fiscal and administrative powers of the former quarter sessions. These changes, with the township system previously inaugurated, formed the main outlines of the ''county-township'' system, similar to that of Pennsylvania, which was to predominate in the Middle-West.

Indiana followed Ohio closely in the development of local institutions. During the territorial period, townships with elective officers were organized, but county officers were appointive. The first state constitution (1816) provided for the election of sheriffs, coroners, clerks of courts, recorders, and justices; and before long an elective board of county commissioners was established for each county.

In Illinois the early settlers came largely from the South, where there was no organized township government; and as a result county government absorbed the township. But the county system established was similar to that in Ohio and Indiana. When Illinois became a state it was divided into fifteen counties. For each there was an elective county commissioners court, with power to levy local taxes and appoint election officers, road supervisors, and overseers of the poor. Sheriffs, coroners, clerks, treasurers, surveyors, and recorders were all made elective. By the first constitution, justices of the peace and constables were appointed by the governor; but in 1826 the justices were made elective by precincts. Before long the geographical township was made a corporation for school purposes; and the same district came to be used as a precinct for elections, roads, justices and poor relief.[3]

Mississippi and Alabama, which became states in 1817 and 1819, did not follow closely the local government of the states immediately to the north, but were largely influenced by the more democratic institutions of Georgia. In that state the elective method had already been extended to clerks of courts and justices of the peace. Both of the new Southern states provided for elective sheriffs, and Alabama also for elective clerks of courts. But in both justices of the peace were appointive, as prescribed by the general assembly.

In Missouri, admitted in 1821, the local institutions were much the same as in the states just mentioned. Sheriffs and coroners were made elective; justices of the peace were appointive.

It will be noticed that in all of the states admitted after 1800, the tendency was strongly in the direction of extending the practice of local elections, notably for the old offices of sheriff and coroner. South of the Ohio River, and in Missouri, justices of the peace continued to be administrative as well as judicial officers. North of the Ohio, the Pennsylvania plan of a special administrative county board had been regularly adopted; while two of the three new states in this section had also established township government.

[3] J. A. Fairlie, *Report on County and Town Government in Illinois* (1912).

CHANGES IN THE OLDER STATES

Most of the older states had thus far shown few signs of changing their local government from the arrangements made at the end of the eighteenth century. The Connecticut constitution of 1818 continued the choice of sheriffs by the legislature; and the Maine constitution of 1820 carried on the plan of the former Massachusetts government.

But the second constitution of New York, adopted in 1821, made important changes in the local government of that state. The council of appointment was abolished. District attorneys were to be appointed by the courts. Sheriffs and county clerks were made elective. Justices of the peace were to be nominated by the boards of supervisors and county judges, but in a few years they too were made directly elective. During the decade following the adoption of the new constitution there was also a significant transfer of poor relief administration from the towns to the counties, altering the balance of power between these two local districts, and affecting the later development throughout the Central states.

In the same decade several New England states established elective county administrative authorities. Before 1820 Massachusetts passed several experimental acts transferring powers and reorganizing the county courts. In 1826 commissioners of highways were established in all but two counties; and in 1828 these were abolished and elective county commissioners were provided, as in Pennsylvania, to exercise the administrative powers formerly vested in the courts of sessions.[4] About the same time (1827), New Hampshire established direct local control over county taxation, by giving this power to county conventions composed of the representatives in the legislature from the towns in each county. In 1831 Maine established elective boards of commissioners for each county.

In the Virginia convention (1829-30) which framed the second constitution of that state, there was a long discussion over the system of local government. A strong effort was made to overthrow the self-perpetuating power of the unpaid county justices, chosen from the well-to-do landowners. The justices were charged with undue family influence and lack of legal training; and Jefferson was quoted in opposition, and as favoring an elective system with township government. In answer, the administration of the justices was defended for its honesty and its practical success; and the influence of Marshall and Madison (both members of the convention) won the day for the retention of the old system.[5]

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[4] C. D. Wright, *Public Records of Massachusetts*, p. 378.

Within the next decade a few other states adopted the elective system more largely. Delaware (1831) made sheriffs and coroners directly elective. Mississippi (1832) made justices of the peace and constables elective, and provided for a probate judge and board of police (both elective) in each county. Tennessee (1834) made court clerks, sheriffs, county trustees, registers, justices, and constables elective, while coroners and rangers were to be appointed by the justices. Pennsylvania (1838) made coroners, clerks of courts, registers of wills, registers of probate, and justices of the peace elective.

With these changes the elective system was well established in the Middle-Atlantic states, the new states to the westward, and the most southerly states. New England had its well-developed town government, but important county officers were still appointive. From Maryland to South Carolina and westward in Kentucky the only effective local government, that of the county, was still administered by appointive officers.

In the states thus far noticed, where an elective county board was established apart from the justices, it was organized on the Pennsylvania model. But, beginning with Michigan, the New York method was introduced in several states. The county system of the Northwest Territory had been extended to the Michigan settlements; and when Michigan was organized as a separate territory a similar county government was continued. In 1825 townships were established with town meetings and elective officers; and at the same time Governor Cass brought about the election of candidates, whom he appointed to the county offices. Two years later, boards of elective town supervisors were established for each county, in place of the small boards of county commissioners—a change doubtless due to the immigration from New York which had begun after the opening of the Erie Canal. When Michigan became a state (1835-7) the elective system was definitely established for all township and county officers.

Early settlements in Wisconsin had been organized under the Illinois system, and later under that of Michigan. When Wisconsin Territory was organized (1837) the small board of county commissioners was revived, and a year later townships were organized for judicial, police, and road administration. Later (1841) an optional system was provided, by which each county was allowed to choose between the small board of commissioners and the larger board of town supervisors. The state constitution (1848) required the legislature to establish a uniform county system; and the New York and Michigan plan was then made general. Township and other county officers were made elective as a matter of course.

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[5] *Debates of the Virginia Convention,* 1829-30, pp. 502-516.

Meanwhile immigration from the Northern states into Illinois had led to a demand for township government in that state. Accordingly the second state constitution (1848) authorized an optional system, and where the township system was established, the county board was composed of town supervisors, as in Michigan and Wisconsin. The northern and central counties rapidly adopted the township system; while those in the southern part of the state adhered to the older form of county government.

WEST OF THE MISSISSIPPI

West of the Mississippi, both county and township government was established in Iowa, Minnesota and Kansas, but with a small county board as in Ohio and Indiana, instead of the large board of town representatives as in Michigan and Wisconsin. Iowa was for a brief period part of Michigan Territory, and later was part of Wisconsin Territory. But the earliest settlers seem to have ignored much of the statutory legislation of these territorial governments and for a time formed their own local institutions.[6] After a time, however, counties were organized with small boards of elective commissioners exercising both judicial and administrative functions, and with other elective officers. Townships were also established. This system continued after Iowa became a state until 1851, when a single elective county judge was substituted for the board of commissioners. Ten years later county boards of town supervisors were introduced; but after another decade the county board was reduced again (in 1871) to three members.

Parts of Minnesota had been at different times under nine territorial governments, before the organization of Minnesota Territory in 1848. But the local institutions of most of the early jurisdictions were not established effectively in the outlying regions; and as in Iowa there were instances of voluntary extralegal local organizations.[7] In Minnesota Territory a county system was established, with no incorporated townships. On admission as a state, 1858, the Illinois system was adopted as a whole; after two years a return was made to the simple county system, but soon the township was reëstablished as an organ of local government.

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[6] Jesse Macy, *Institutional Beginnings of a Western State*, in Johns Hopkins University Studies in Historical and Political Science, vol. 2; B. F. Shambaugh, *Constitution and Records of the Claim Association of Johnson County, Iowa*, in Publications of the Iowa Historical Society, 1894.

In Kansas, too, the earliest settlers formed their own local organizations. The first territorial legislature, in 1855, defined the bounds of thirty-three counties and organized seventeen of these at once with officers appointed by the legislature, which gave control to the pro-slavery party. After admission as a state, in 1861, an elective county and township system was established. The county officers consisted of a board of three commissioners elected by districts, sheriff, coroner, probate judge, county clerk, register of deeds, and county attorney.

Turning to the later Southern states, local government was organized, as in the older states of that region, with the county as the basis. Arkansas, in its first constitution (1836), made the older county officers—sheriff, coroner, treasurer, and surveyor—elective. It also provided for the election by ''townships'' of justices of the peace and constables; and it established in each county a county court of the justices as the fiscal authority, the presiding judge having also probate functions. This arrangement, while preserving the terminology of the older Southern system, organized the county board on lines similar to the boards of supervisors in New York and other Northern states; but the townships were little more than election and judicial districts.

FLORIDA, TEXAS, AND CALIFORNIA

In the first Florida constitution (1845), the only section on local government, was one providing that justices of the peace might be either elected or appointed, as determined by the general assembly.

When Texas became an independent republic in 1836, the American county system was substituted for the earlier Mexican local government. Those controlling the government, however, did not introduce the decentralized system of local elections that had already become established throughout the United States. Sheriffs, coroners, justices of the peace, and constables were appointed; and on admission as a state (1845) the same system was continued.

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[7] Charles E. Flaudrau, *History of Minnesota,* p. 406.

California, like Texas, was first organized as a part of Mexico. Under a law of 1836 the whole department of California, including the lower peninsula, was divided into three districts, and these into subdistricts (*partidos*), with a centralized hierarchy of officials similar to the French administrative system. Over each district was a prefect, nominated by the governor of the department and confirmed by the central government of Mexico, for a term of four years. In each subdistrict was a subprefect, nominated by the prefect and approved by the governor. The urban communities were organized as *ayuntamientos,* while in the country regions there were petty justices proposed by the subprefects, nominated by the prefects and confirmed by the governor.[8]

As soon as the state government was organized (1850), the legislature superseded this Mexican system by organizing twenty-seven counties. Each county was provided with a full quota of officials—sheriff, district attorney, treasurer, assessor, recorder, clerk, surveyor, and constables—all elective. Justices of the peace and county courts were also established.[9]

But in the mining camps, which appeared rapidly after the discovery of gold, local government was carried on for some years with little reference to the statutory system. Each camp formed its own local institutions, and there developed a considerable body of customary law, governing especially crimes and land titles. The ''camp legislation'' on mining claims was later ratified by the United States government. The criminal law was harsh and tended to degenerate into lynch law; frequently there were serious disturbances; and it was many years before order was well established.[10]

CONSTITUTIONAL REVISION AND AMENDMENT

During the twelve years from 1844 to 1856 most of the older states made important changes in their systems of local government, either in connection with general revisions of their constitutions, or by specific constitutional amendments. New Jersey adopted a second constitution in 1844, Louisiana a second in 1845 and a third in 1852, New York a third in 1846, and Illinois a second in 1848. In 1850 and 1851 new constitutions were adopted in Maryland, Virginia, Kentucky, Ohio, Indiana, and Michigan. Constitutional amendments affecting local government were adopted by Connecticut and Vermont in 1850, Massachusetts in 1855, and Maine in 1856.

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[8] H. H. Bancroft, *History of California,* III, 585; IV, 533. Hittell, *History of California,* II, 258.

[9] H. H. Bancroft, *op. cit.,* VI, 317; Hittell, *op. cit.,* II, 793-7.

[10] H. H. Bancroft, *Popular Tribunals;* Hittell, *op. cit.,* III, ch. 11; Josiah Royce, *California,* ch. 4.

One very definite purpose ran through all of these constitutional changes in local government—the more extended application of the formula of popular election. Old appointive offices were made elective, and new elective offices were established; while in some cases other significant changes in local institutions were effected. In Virginia and Kentucky there was a complete revolution, from the appointive system controlled by the self-renewing justices to the election of all county officers and justices of the peace. At the same time, the county court in these states was reduced to a small body of judges specially elected for that purpose; while in Virginia provision was made for elective commissioners of revenue in each county.

In the New England states, sheriffs, probate officers, and sometimes other officers, became elective;[11] and justices of the peace were made elective in Connecticut and Vermont, but remained appointive in Massachusetts, Maine, and New Hampshire. In the last named state elective boards of county commissioners were established in 1855.

In the other states the elective method had previously been largely introduced, and was now extended to other offices: in New Jersey to county clerks, surrogates and justices; in New York to county judges and district attorneys; in Ohio to court clerks and probate judges; in Indiana to the new office of county auditor; and in Illinois to county judges and justices.

Thus before the Civil War the main features in the development of local institutions had been established. Throughout the country the states were divided into counties, each with a considerable number of elective offices, but with important differences in the organization of the fiscal authority. Everywhere, too, the county was subdivided into smaller districts; but these varied in importance from the New England town, through the township of the Middle-West, to the election and judicial precincts in the South. The basis of the suffrage for local elections was the same as for state elections; and had been steadily extended during the half century before 1860, until the general system was one where every free white male citizen could vote.

[11] Except in New Hampshire, where they were appointive until 1879.

AFTER THE CIVIL WAR

After 1860 there were further changes in local institutions. Features of the northern systems were introduced in the Southern states; while the development of local government in the newest states of the far West has some points of interest.

As a result of the adoption of the fourteenth and fifteenth amendments to the national constitution, negroes throughout the country received the suffrage; and in the Southern states, where this addition to the voting class was of the greatest significance, the extended suffrage was confirmed by the Reconstruction state constitutions. Nevertheless, within a decade the negro vote was practically eliminated in most of the Southern states; and more recently this exclusion of negroes from the franchise has been practically confirmed by constitutional provisions establishing educational and property qualifications for the suffrage, which apparently avoid technical violation of the national constitution.

Next in importance was the attempt to transplant the northern township to the Southern states. When West Virginia was formed into a separate state (1863), its constitution provided for dividing the counties into townships with a number of elective officers; and the county board was to be composed of the township supervisors.[12] In 1864 a new Maryland constitution required the general assembly to provide for township government. The Reconstruction constitutions of North Carolina and Alabama provided for townships for the election of justices and constables, and also, in the former state, of school committees. And in 1870 a new Virginia constitution established an elaborate township system, similar to that of West Virginia.

These measures, however, had only a slight permanent result. In three years Maryland again revised her constitution, and in the new document the provision for township government disappeared. In 1872 West Virginia abolished the boards of supervisors and townships, and revived the county court of justices elected by districts. Two years later Virginia replaced townships by magisterial districts for the election of justices, supervisors, constables, and overseers of the poor. In a number of states the name ''township'' has replaced the former ''precinct''; subdivisions of the counties have become local districts for school administration; and in a few states there have been some additions to the number of elective officers in these districts; but no fully organized township system has developed as in the Northern states.

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[12] 10 *Sewanee Review,* 134.

Some other changes were made in the Reconstruction constitutions. In the Carolinas and Texas the elective system was finally instituted for the old county officers, and elective boards of county commissioners were also established. Georgia provided for a probate judge under the old ecclesiastical title of " ordinary," and gave to this single official the administrative powers of the county court over roads and finances. Mississippi changed the title of the county boards of police to boards of supervisors, but they remained small boards of five members elected by districts.

Florida (1868) established boards of county commissioners and at the same time started what seems at first sight an astonishing reaction from the decentralizing movement that had thus far marked the history of local government throughout the country. The governor was empowered to appoint the new commissioners, other county officials and justices of the peace, leaving constables as the only elective local officers. In practice, however, the formal method of appointment was a device for preventing negro control of local offices in the "black counties." On election day, democratic primary elections were held in separate polling places for nominating candidates for the various appointive offices, and the candidates thus chosen were regularly appointed to the positions. When the negro vote had been eliminated, the elective system was restored.

In other Southern states there have been similar centralizing measures, many of which are still in force. In 1876 the North Carolina legislature was authorized to appoint county commissioners and justices of the peace. In South Carolina the governor appoints justices and county commissioners, and in Georgia county judges and solicitors. In Mississippi county health and education officers are appointed by state boards; and in Virginia the state educational authorities have an important voice in the selection of local school officials.

THE FAR WEST

In the most recent states of the West a striking feature of local government is the development of the county to a position of much greater importance than in any other part of the country. New counties were organized in the Western regions by the territorial governments as rapidly as population advanced. Before 1850 counties had been established in New Mexico, Utah, and Oregon; by 1860 in Nebraska and Washington; and by 1870 in Colorado, Dakota, Montana, Idaho, Wyoming, Nevada, and Arizona. By the latter date the whole territory included in the United States, except Indian Territory, Indian reservations elsewhere, and Alaska, had been formed into counties; and since then new counties have been formed by subdividing and rearranging the boundaries of the older counties.

Township government has also been established to some extent in several of these later states. In 1872 Missouri introduced an optional plan of county government modeled on that of Illinois;[13] and in 1875 Nebraska[14] established a similar arrangement. When Dakota Territory was formed into two states (1889), South Dakota provided for the organization of township government, and North Dakota adopted the optional plan. Oklahoma also established both township and county government.

But in the states and territories west of the 104th meridian, while counties are divided into judicial, election and school districts, township government has made little headway.[15] This is doubtless due in part to the fact that these regions are only sparsely settled, and to the organization of municipal corporations in the small village communities. At the same time, an analysis of county expenditure shows that the county government is much more active than in the older states.

Local government in the United States has also been profoundly affected by the development of urban communities, and their separate organization as cities, boroughs, villages, and incorporated towns. Proceeding slowly for a time, since the middle of the nineteenth century the growth of cities, both large and small, has advanced at an increasing rate, until more than half the total population of the country now lives in communities of more than 2,500 population. More especially after the Civil War, there was a striking development in the number of small villages, boroughs and incorporated towns. In 1900 there were over 10,000 incorporated municipalities in the United States, and in 1920 more than 15,000. In the New England states the separate organization of small municipal corporations within the towns is not common, but in all the other states they are to be found in abundance.

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[13] This first Missouri law was repealed the following year, but another law was enacted in its stead, under which 20 counties adopted township organization. The law was again repealed in 1877, but again renewed in 1879, and under this 24 counties have organized townships.

[14] Twenty-seven counties in Nebraska have townships.

[15] The state of Washington has an optional township law, adopted in two counties.

This separate incorporation of small villages, and also of numerous special districts, affects in no small degree the relative importance of the town and county in different parts of the country. It is due in a large measure to them that the township of the Middle-West is of so much less importance than the New England town; and in much the same measure these corporations have enabled the states of the South and Far West to do without township organization.

Even in the Central and Middle-Atlantic states the township is a declining institution, and the county has become of increasing importance, by the transfer of functions from the township and the development of older and new activities. This has increased the complexities of county governmental organization; and it is only in recent years that beginnings have been made towards a more efficient system of public administration.

Finally may be noted the gradual development of some central state administrative supervision over certain branches of local government. In some lines the first steps in this direction are to be seen even before 1850; but it is since that time, and more noticeably during the last fifty years, that the tentative steps have become a distinct tendency. Beginning with school administration, and extending to public health, charities and corrections, roads, libraries, and finance, state officers and boards have been established with varying powers of supervision and control over local officials; and in some cases with power to exercise direct administration in fields formerly left entirely to the local authorities. As yet the movement is far from establishing a completely centralized system of local administration in any of the states, but it is at least a significant reaction from the extremely decentralizing tendencies in force up to the middle of the nineteenth century.

Another phase of the same tendency is the increasing centralization of power in the national government, which has begun to affect county and local government. The advisory influence of national agencies, federal subsidies, and the prohibition amendment tend to bring local authorities and local conditions to some extent under the direction and control of the government at Washington.

PART II

COUNTY AND STATE RELATIONS

CHAPTER IV

THE LEGAL NATURE AND STATUS OF THE COUNTY

A REVIEW of judicial opinions indicates the general doctrine that the American county has a legal position wholly subordinate to the state government. But the extreme view seems to call for qualification in the light of constitutional and statutory provisions, as well as other developments; and this situation is recognized to some extent in some of the recent decisions.

The Anglo-Saxon shire was a district of large local autonomy, subject to only limited control by the central government. But with the development of a more highly centralized government in England after the Norman Conquest, the county came to be considered as primarily an administrative district for the general government, and was not recognized as having the legal status of a municipal corporation,[1] when the borough came to receive this recognition. The same view was applied to the early American county; and continued after the practice of local election of county officers had developed, and other changes were introduced in the state constitutions and laws.

Thus Chief Justice Taney has stated: "Counties are nothing more than certain portions of the territory into which the state is divided for the more convenient exercise of the powers of government."[2] It has been held that they "exist only for the purpose of the general political government of the state. They are the agents and instrumentalities the state uses to perform its functions. All the powers with which they are entrusted are the powers of the state."[3] More conservatively, another court has said that "a county organization is created almost exclusively with a view to the policy of the state at large."[4]

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[1] *Russell v. Devon County,* 2 T. R. 667 (1788).

[2] *State of Maryland v. Baltimore and Ohio R.R. Co.,* 3 How. 534 (1845). Also see *State v. Board of Commissioners,* 82 N.E. (Ind.) 482 (1907).

[3] *Maddenn v. Lancaster Co.,* 65 Fed. Rep. 188, 191; 12 C.C.A. 566 (1894). Cf. *Independent Publishing Co. v. Lewis and Clark County,* 75 Pac. (Mont.) 860 (1904); *Yamhill v. Foster,* 99 Pac. (Ore.) 286 (1909).

[4] *State v. Downs,* 60 Kas. 788 (1899).

Counties are now referred to as bodies corporate and politic, and are recognized as public corporations. In some states they are now included in the class of municipal corporations; but in most states they are considered only as quasi-corporations, along with townships, school districts, and road districts. This term is used to indicate the low rank they hold in the scale of corporate existence; and serves to distinguish them from municipal and from private corporations.[5]

The distinction between municipal corporations and quasi-corporations such as counties, was well expressed by the Supreme Court of Ohio in a case before it in 1857.[6] The court emphasized the fact that "municipal corporations proper are called into existence, either at the direct solicitation or by the free consent of the people who compose them." But the court went on to point out that "counties are local subdivisions of a state, created by the sovereign power of the state, of its own sovereign will, without the particular solicitation, consent, or concurrent action of the people who inhabit them. The former organization is asked for, or at least assented to by the people it embraces; the latter is superimposed by a sovereign and paramount authority. A municipal corporation proper is created mainly for the interest, advantage, and convenience of the locality and its people; a county organization is created almost exclusively with a view to the policy of the state at large, for purposes of political organization and civil administration, in matters of finance, of education, of provision for the poor, of military organization, of the means of travel and transport, and especially for the general administration of justice. With scarcely an exception, all the powers and functions of the county organization have a direct and exclusive reference to the general policy of the state, and are, in fact, but a branch of the general administration of that policy."[7]

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[5] John F. Dillon, *Municipal Corporations* (5th ed.), vol. 1, sec. 57.

[6] *Commissioners of Hamilton County v. Mighels,* 7 Ohio St. 109 (1857). Also see *Scales v. Chatahoochee County,* 41 Ga. 225 (1870); *Granger v. Pulaski County,* 26 Ark. 38 (1870); *O'neal v. Jenettee,* 129 S.E. (N. C.) 184 (1925).

[7] The Supreme Court of Illinois in a case before it in 1924, in comparing the legal nature of municipal and quasi corporations said: "Municipal corporations are those called into existence either at the direct request or by consent of the persons composing them. Quasi municipal corporations, such as counties and townships, are at most but local organizations, which are created by general law, without the consent of the inhabitants thereof, for the purpose of the civil and political administration of government, and they are invested

While the law of municipal corporations is not applicable to counties and other quasi-corporations, neither are their rights and duties determined by the law applicable to private corporations,[8] for they are in no sense business corporations.[9] "No ground appears for ascribing private corporate powers to counties. Their powers and duties are purely governmental."[10]

While in most states judicial opinions distinguish counties from municipal corporations, there are a number of states where counties are recognized as municipal corporations by constitutional or statutory provisions, or in judicial opinions. In North Carolina, Alabama, and Montana, counties are dealt with in the state constitution under the general title of municipal corporations. In North and South Carolina, Indiana, Oklahoma, Texas, and Wyoming, counties have been classed as municipal corporations by the

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with but few characteristics of corporate existence. They are, in other words, local subdivisions of the state created by the sovereign power of the state of its own will, without regard to the wishes of the people inhabiting them. A municipal corporation is created principally for the advantage and convenience of the people of the locality. County and township organizations are created in this state with a view to carrying out the policy of the state at large for the administration of matters of political government, finance, education, taxing, care of the poor, military organization, means of travel and the administration of justice. The powers and functions of county and township organizations therefore, as distinguished from municipal corporations, have a direct and exclusive bearing on and reference to the general, rather than local, policy of the state." *Cook County v. City of Chicago,* 142 N.E. (Ill.) 512 (1924). The Supreme Court of California in considering this question has said: "A county is a governmental agency or political subdivision of the state, organized for purposes of exercising some functions of the state government, whereas a municipal corporation is an incorporation of the inhabitants of a specified region for purposes of local government." *County of San Mateo v. Coburn,* 130 Calif. 631, 636 (1900). Cf. *Garr v. Fuls,* 133 Atl. (Pa.) 150 (1926).

As has been pointed out by the Supreme Court of Louisiana, the parishes of that state are also quasi corporations; "Parishes, like counties in other States, are involuntary political or civil divisions of the State, designed to aid in the administration of government, as State auxiliaries or functionaries, possessing no other powers than those delegated, ranking low down in the scale of corporate existence, and well distinguishable from municipal corporations proper, which are vested with more extensive powers and endowed with more important functions and a larger measure of corporate life." *Parish of West Carroll v. Gaddis,* 34 La. Ann. Rep. 928, 931 (1882).

[8] *City of Pendleton v. Umatilla County,* 241 Pac. (Ore.) 979 (1925).

[9] *Silver v. Board of Commissioners,* 91 Pac. (Kas.) 55 (1907); *Eagle v. Beard,* 33 Ark. 497 (1878).

[10] *O'Brien v. Rockingham County,* 120 Atl. (N. H.) 254 (1923).

courts.[11] In New York State, by act of 1892, counties are declared to be municipal corporations; and it has been held by the supreme court that, in view of this act, it seems hardly open to question that a county is a municipal corporation, suable and capable of suing in its own name like any and all corporations.[12]

POWER OF THE STATE LEGISLATURE OVER COUNTIES

Resulting from the nature of counties as administrative districts and agents of the state, created for governmental purposes and for greater convenience in carrying on public affairs, is the complete and plenary power of the legislature over counties,[13] *except where specific provisions of the constitution govern.*[14] As a necessary corollary of the fact that counties are merely political entities or subdivisions of the state, it follows that "the state may, through its Legislature, and in the exercise of its sovereign power and will, in all cases where the people themselves have not restricted or qualified such exercise of that power, apportion and delegate to the county any functions which belong to it." But it also follows that, "on the other hand, the state may take back and itself resume the exercise of certain functions which it has delegated to those local agencies."[15]

In considering the power of counties the courts have held that while they are bodies politic and corporate, whose business, generally, is transacted by their boards of county commissioners, they have "only such powers as are conferred by law, either expressly or by necessary implication.''[16] The Supreme Court of Colorado has referred to counties as ''purely auxiliaries of the state'' and pointed out that ''to the general statutes of the state they owe their creation, and the statutes confer upon them all the powers they possess, prescribe the duties they owe, and impose the liabilities to which they are subject.''[17] These may be regulated and controlled by the legislature as it sees fit, except where restricted by the constitution. Thus a county can be compelled by the legislature to contribute to the expenses of a metropolitan police force, or to pay the salary of a municipal judge.[18]

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[11] *Gooch v. Gregory,* 65 N. C. 143 (1871); *Glenn v. York Co.,* 6 S. C. 412; *Commissioners of Laramie County v. Commissioners of Albany County,* 92 U. S. 307 (1876); *Board of Commissioners of Tippecanoe County v. Lucas,* 93 U. S. 108 (1876); *Mount Pleasant v. Beckwith,* 100 U. S. 514 (1880); *Territory v. Hopkins,* 9 Okla. 135, 59 Pac. 976 (1899); *Brite v. Atascosa County,* 247 S.W. (Texas) 878 (1923).

[12] Birdseye, Cumming and Gilbert, *Consol. Laws of N. Y.* (2d ed.), vol. 2, p. 1378; *Kennedy* v. *Queens County,* 62 N. Y. S. 276 (1900). Cf. *Wadsworth v. Board of Supervisors,* 112 N.E. (N. Y.) 161 (1916).

[13] *State v. Board of Supervisors,* 105 So. (Miss.) 541 (1925); *Divide County v. Baird,* 212 N.W. (N. D.) 236 (1926); *McHenry County v. Northern Trust Co.,* 200 N.W. (N. D.) 888 (1924); *Edwards v. Lewis and Clarke County,* 165 Pac. (Mont.) 297 (1917); *McSurely v. McGrew,* 118 N.W. (Ia.) 415 (1908); *Hammond v. Clark,* 71 S.E. (Ga.) 479 (1911).

[14] See Chapter V for constitutional limitations upon the power of the legislature over counties.

[15] *County of Sacramento v. Chambers,* 164 Pac. (Calif.) 613 (1917). Also see *Watson v. Greely,* 227 Pac. (Calif.) 664 (1924).

The Supreme Court of the United States, in considering the question of legislative control over counties and ''the paramount authority of the state, in respect as well of its acts as of its property and revenue held for public purposes,'' has said: ''The state made it, and could, in its discretion, unmake it, and administer such property and revenue through other instrumentalities.''[19] The Supreme Court of North Carolina has held that since counties are but agencies of the state government, ''they can be created, changed, or abolished at the legislative will.''[20]

The power of the legislature over counties, because of their nature as quasi-corporations, may be shown by its control over county property. The Supreme Court of Missouri has upheld the constitutionality of an act of the state legislature directing the county to appropriate part of its revenue, already collected, in a certain way. The court pointed out that the county is not a private corporation ''but an agency of the State government, and though as a public corporation it holds property, such holding is subject to a large extent to the will of the legislature. Whilst the legislature cannot take away from a county its property, it has full power to direct the mode in which the property shall be used for the benefit of the county.''[21]

The control of the legislature over county property is shown in a forceful manner in a case before the United States Circuit Court for the District of North Dakota in a case before it in 1898.[22] In this case a county had been sued on a warrant, but the plaintiff was defeated on the ground that the county commissioners had no authority to contract for the services for which the warrant was given. The state legislature afterwards passed an act authorizing contracts of a like nature and validating those theretofore made. In upholding the validity of this act, the court considered the nature of a county as a quasi-corporation and mere instrumentality of the state, "at all times, both as to its powers and its rights, subject to legislative control." In considering the extent of legislative control over the property of a county, the court said: "While it is no doubt true that the legislature has not such transcendent and absolute power over these bodies that it can apply property held by them to private purposes or to public purposes wholly disconnected with the community embraced within their limits, still it is true that a purely public corporation like a county, cannot acquire any vested interest which will preclude the legislature from directing the application of all its property and rights to the performance of those governmental functions which pertain to the community embraced within the corporation and for the performance of which the corporation was created. If it were otherwise, counties, instead of being agencies of the state for administering the government, would be petty sovereignties, to impede and defeat the state with claims of local interest and authority."

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[16] *Franzke v. Fergus County,* 245 Pac. (Mont.) 962 (1926).

[17] *Board of Commissioners v. Wheeler,* 89 Pac. (Colo.) 50 (1907).

[18] *State v. St. Louis County Court,* 34 Mo. 546 (1864); *Clark v. Eve,* 68 S.E. (Ga.) 598 (1910).

[19] *Rogers Locomotive Machine Works v. American Emigrant Co.,* 164 U. S. 559 (1896).

[20] *State v. Commissioners of Haywood County,* 30 S.E. (N. C.) 352 (1898).

[21] *State v. County Court of St. Louis County,* 34 Mo. 546 (1864). Also see *Board of Commissioners v. Lucas,* 93 U. S. 108 (1876).

A case of somewhat different nature, but which indicates the legal status of the property held by counties, was before the Supreme Court of Illinois in 1911.[23] A city attempted to take, by eminent domain, a strip of land through the county poor farm for street purposes. While cities had been authorized to take property for public purposes by the right of eminent domain, the Supreme Court of Illinois held that they could not take the property used for a poor farm since this was not private property. The county was held to have "no powers except such as are derived from the statutes constitutionally enacted, and it can own no private property." The court went on to say that "property, the title to which is vested in the county, is public property, held by the county as a state agency, and in the absence of positive constitutional restriction is subject to the disposition of the legislature without the consent of the county authorities."

[22] *Erskine v. Steele,* 87 Fed. 630 (1898).

[23] *City of Edwardsville v. Madison County,* 96 N.E. (Ill.) 238 (1911).

Another case in which a county attempted to use the argument that since it was but an agent of the state, its property was not subject to control by a city, was before the Supreme Court of Illinois in 1924.[24] Cook County brought suit against the City of Chicago to restrain it from enforcing its fire and building ordinances in the construction of a jail within the city limits on the grounds that the county was but an "arm of the state to which there has been committed the control of county buildings, and that it is not, therefore, subject to the police power of the city." The Supreme Court of Illinois held, however, that the legislature of the state in delegating the police power to cities and giving them power to cause all buildings and inclosures in a dangerous state to be put in a safe condition, intended to confer upon the city council such power over all buildings within the city including county buildings. It was pointed out that "while the county is an agency of the state, it is likewise a creature of the state."

In 1921 the legislature of the State of Nebraska passed an act which provided that the county commissioners of any county should furnish rooms in the court-house for the municipal courts of any city which was the county seat of that particular county. The county commissioners of the county of which Omaha was the county seat refused to furnish rooms for the municipal courts of that city. The Supreme Court of Nebraska upheld the lower court in allowing a writ of mandamus to issue against the commissioners to command them to furnish such rooms for the municipal courts. The court, in considering the power of the legislature over county property, said: "It must be remembered that a county does not possess the double governmental and private character that cities do. It is governmental only, and in that capacity acts purely as an agent of the state. The funds raised by taxation in the county are subject to the direction and control of the legislature for public use in that county, and the property of the county, acquired by funds raised through taxation, is property of which the state can direct the management and disposition, so long at least as it acts for the benefit of the public in the taxing district." [25]

These cases illustrate the power of the legislature over counties as administrative agents of the state. As has been noted, this authority extends not only to their powers but also to their property. Because of the abuse in many cases of this plenary power of the legislature over the counties, there has been a marked tendency to impose constitutional limitations upon the state legislature in its power of control over counties. Constitutional provisions dealing with the subject of county government will be discussed in the following chapter. At the present time it is sufficient to point out that these constitutional limitations have qualified the practical working of the judicial doctrine of plenary legislative control over counties.

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[24] *Cook County v. City of Chicago*, 142 N.E. (Ill.) 512 (1924).

[25] *State v. Board of Commissioners*, 189 N.W. (Neb.) 639 (1922).

LEGAL RIGHTS AND OBLIGATIONS

The principle is well established that a state cannot be sued in its own courts without its consent and permission.[26] Counties are nothing more than certain portions of territory into which the state is divided for the more convenient exercise of the powers of government, and a suit against the county is in effect a suit against the state.[27] Since the counties are created for the administration of justice, the restraint of minor criminals, the relief of paupers, etc., the fact that the state administers these things through geographical subdivisions does not make the acts any the less acts of sovereignty.[28] At the same time, as has been held by the Supreme Court of Colorado: ''A county is not sovereign in the sense in which the state is sovereign, exempt from suit except by its own consent.'' [29]

It is thus generally held that actions may be maintained either by or against counties only by virtue of statutory or constitutional authority.[30] The Supreme Court of Oregon, in considering the question of suits against counties, has stated that it is the settled ruled in that state that ''neither the state itself, nor one of its counties, which are but instrumentalities of the state in the exercise of its sovereignty, can be sued, unless upon express permission given by the legislative power in the form of a statute permitting the same. Public policy forbids that the state shall be made a defendant in litigation without its consent, and as counties are regarded as parts of the government the exemption is in good reason also extended to them, unless a statute exists expressly allowing the maintenance of actions against them.''[31]

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[26] *Beers v. Arkansas*, 20 How. 527, 529 (1857).

[27] *Wooster v. Plymouth*, 62 N. H. 193, 208 (1882); also see *Maryland v. Baltimore and Ohio R.R. Co.*, 3 How. 534, 550 (1845).

[28] *O'Brien v. Rockingham County*, 120 Atl. (N. H.) 254 (1923); *Board of Commissioners of Greer County v. Watson*, 54 Pac. (Okla.) 441 (1898).

[29] *Board of Commissioners of El Paso County v. City of Colorado Springs*, 180 Pac. (Col.) 301 (1919).

[30] *Muskogee County v. Lanning and McRoberts*, 151 Pac. (Okla.) 1054 (1915); *Board of Commissioners of Phillips County v. Churning*, 35 Pac. (Colo.) 918 (1894); *Whittaker v. Tuolumne County*, 30 Pac. (Calif.) 1016 (1892); *Ellis v. Floyd County*, 102 S.E. (Ga.) 181 (1920); *Kent v. Wheeler County*, 94 S.E. (Ga.) 271 (1917); *City of Grenada v. Grenada County*, 76 So. (Miss.) 682 (1917); *Jones v. Jefferson County*, 89 So. (Ala.) 174 (1920); *Mills v. Chatham County*, 107 S.E. (Ga.) 628 (1921); *Newman v. St. Louis County*, 176 N.W. (Minn.) 191 (1920); *Buckalew v. Board of Chosen Freeholders of Middlesex County*, 104 Atl. (N. J.) 308 (1918).

The Court of Appeals of Kentucky has stated that with respect to the right of a party to sue, ''there is a wide difference between 'municipal corporations' and 'counties.' '' The court has stated the principle of the liability of the county to suit as follows: ''It is a well-established doctrine in this state, and in harmony with the rule generally prevailing, that counties are not liable to suit, unless authority for it can be found in the statute, or it follows by necessary implication from some express power given. The reason upon which this rule rests is that counties are subordinate political subdivisions of the state. They are created for public purposes, and are a part of the necessary machinery of government, and can no more be sued by the citizen than can the state.'' The court went on to say that ''the right of these political subdivisions of the state to sue is much larger than their right to be sued, and this follows from the fact that, having control of the bridges, highways, and public buildings of the county, it is necessary that they should be invested with all needful power to protect and preserve them, and so it has been held that a county may maintain an action for injury to its courthouse or public roads.''[32]

NON-LIABILITY OF THE COUNTY FOR TORTS

It is the general holding of the courts that ''as counties are merely geographical divisions of the state for the convenient exercise of sovereign power, each for that purpose represents the state, and is not suable for default in the exercise thereof in the absence of statute permitting such suit.''[33] The courts also hold that cities are not liable for tort where their officers are engaged in governmental functions; from this they reason that since the county, as an agent of the state, performs only governmental functions, there can be no liability on its part. It is also pointed out that no right of action should lie against counties and other quasi-corporations, since "these organizations are not voluntary but compulsory; not for the benefit of individuals who have asked for such a corporation, but for the public generally."[34]

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[31] *Rapp v. Multnomah County,* 152 Pac. (Ore.) 243 (1915).

[32] *Marion County v. Rives and McChord,* 118 S.W. (Ky.) 309 (1909); *Commonwealth v. Boske,* 99 S.W. (Ky.) 316 (1907).

[33] *State v. Board of Commissioners of Marion County,* 85 N.E. (Ind.) 513 (1908); *Brown v. Davis County,* 195 N.W. (Ia.) 363 (1923). For exceptions to this rule see *Anne Arundel County v. Watts,* 76 Atl. (Md.) 82 (1910); and *Matsamura County v. Hawaii County,* 19 Hawaii 18, 33. On the question of

Municipal corporations, on the other hand, are held to a greater degree of responsibility for torts than are counties. This is because of their dual character and the nature and purpose of their creation. Municipal corporations usually receive a special charter from the state, only at the request of those to be incorporated. Since municipal corporations are voluntary, it is assumed that incorporation confers what to them is a valuable privilege. Some of the special privileges conferred are larger powers of self-government, greater privileges in the acquisition and control of corporate property, and special authority to make use of the public highways for the special and peculiar convenience of the people of the particular city.[35]

The municipal corporation, in receiving a grant of powers for its own beneficial purposes and not for the benefit of the state as a whole, assumes a greater degree of liability. It is not only an administrative agent of the state but it is also a unit of local government; thus it assumes a dual character. The fact that the municipal corporation receives this grant of power from the state primarily for the benefit of the people within the corporation, is emphasized by the courts in holding it liable for failure to perform its corporate duties. But as in the case of the quasi-corporation, there is no responsibility in cases where the municipal corporation performs governmental functions as an agent of the state.

While the holding of the courts has been quite general that counties are not liable in tort, since they perform governmental functions only, there seems to be a tendency to depart from this rule in some cases. This has been noted especially in cases where

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governmental liability in tort, see articles by Edwin M. Borchard, 34 *Yale Law Journal* 1-45, 129-143, 229-258 (1924-25), 36 *Yale Law Journal* 1-41, 757-807, 1039-1100 (1926-27), 28 *Columbia Law Review* 577-617, 734-775 (1928).

[34] *Cook County v. City of Chicago*, 142 N.E. (Ill.) 512 (1924).

[35] See Thomas M. Cooley, *Constitutional Limitations* (8th ed.), vol. 1, p. 517; John F. Dillon, *Municipal Corporations* (5th ed.), vol. 1, sec. 38.

damages have been allowed against counties and other quasi-corporations because of the negligent invasion of the property rights of persons by the county's use of land which it holds only for public governmental purposes, as the soil of highways.[36] The allowance of damages in such cases is placed upon the liability of a landowner for the maintenance of a nuisance on his land to the injury of his neighbor.[37] It has been suggested that such suits might be maintained because they were brought to redress an injury to private rights, and that they therefore might be distinguished from the cases where an individual depended upon a public right, such as his right as a traveler on the highways.

The Supreme Court of New Hampshire, in a case before it in 1923,[38] questioned the decisions which were based upon this reasoning, and held that if the counties and quasi-corporations were liable in such cases it established the liability of the state itself. "But," according to the opinion of the court, "the state can no more be sued for injuries caused by its own negligence or that of its servants or agents, or for the results of a nuisance maintained on its land, than it can be for a breach of its promise to pay for service rendered or money loaned." The court indicated that it could not agree with the reasoning in these cases by which the liability of quasi-corporations was established; rather it seemed to look upon the two lines of cases, one holding quasi-corporations liable for negligent invasion of an adjoining owner's property rights by the use of land which they hold only for governmental purposes, as the soil of highways, and those holding them not liable for negligent invasion of private personal rights while acting in a public governmental capacity, as not being logically reconcilable.

Another explanation that has been offered of the two types of decisions has been that "it would seem that the evident justice of the individual's cause has influenced the courts, and led them to seize upon any possible distinctions to afford a remedy for what is clearly a wrong in fact if not in law."[39] Again, it may reflect the tendency to bring into the field of liability of quasi-corporations the question of the soundness of the old rule of non-liability, as was done by Justice Wanamaker of the Supreme Court of Ohio in 1919 in a case dealing with the question of the liability of municipal corporations while performing governmental functions.[40]

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[36] *Newman v. County of St. Louis*, 176 N.W. (Minn.) 191 (1920); *Lindstrom v. County of Ramsey*, 161 N.W. (Minn.) 222 (1917); *Wheeler v. Gilsum*, 62 Atl. (N. H.) 597 (1905); *Clair v. Manchester*, 55 Atl. (N. H.) 935 (1903).

[37] *Burnham v. Windham*, 88 Atl. (N. H.) 701 (1914).

[38] *O'Brien v. Rockingham County*, 120 Atl. (N. H.) 254 (1923).

[39] "Note" 8 *Minn. Law Rev.* 164 (1923).

As the state may by statute permit itself to be sued in certain cases in its own courts, it may also place liability upon counties in certain classes of cases.[41] This principle is brought out in a case before the Supreme Court of Texas in 1926.[42] Suit was brought against a county for damages resulting from the improvement of a road by the county. The suit was for damages to land and also to the health of the owner of the land resulting from the flooded property. The court pointed out that ''at common law, counties, as a rule, are not liable for injuries resulting from the negligence of their officers or agents, and no recovery can be had in damages unless liability be created by statute.'' The legislature of Texas had provided for the payment of damages by the county to land in such cases; therefore, suit for damages to land would be sustained against the county in such cases. But as neither the constitution nor the statutes authorized a recovery against the county for damages to the health of persons on account of the construction or maintenance of a road, suit in such cases would not be entertained.

While the municipal corporation is not liable for tort when engaged in governmental functions, it is liable when it engages in private or corporate functions. The Supreme Court of Georgia had before it in 1926 the question as to whether a county would be liable for damages to one injured while working in a county rock quarry.[43] The court held that a county, in quarrying and crushing stone on its land for highways, exercises a governmental function, and that no liability attaches to the non-performance or improper performance of the duties of the officers, agents, or servants of the county in respect to these governmental functions. According to the opinion of the court, it would not affect the public character of the officers, agents or servants of the county that a purely incidental profit might result to the county from its operation and management of the quarry, or because of the sale to the public of a portion of the stone crushed at the quarry.

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[40] *Fowler v. City of Cleveland,* 126 N.E. (Ohio) 72 (1919); see concurring opinion of Justice Wanamaker. But cf. *Aldrich v. City of Youngstown,* 140 N.E. (Ohio) 164 (1922).

[41] For cases in which this has been done see: *Decatur County v. Praytor, Howton, and Wood Contracting Co.,* 137 S.E. (Ga.) 247 (1927); *Blum v. Richland County,* 17 S.E. (S. C.) 20 (1893); *Eastman v. Clackamas County,* 32 Fed. 24 (1887); *Hoexter v. Judson,* 59 Pac. (Wash.) 498 (1899).

[42] *Harris County v. Gerhart,* 283 S.W. (Texas) 139 (1926).

[43] *Wood v. Floyd County,* 131 S.E. (Ga.) 882 (1926).

The question was also considered as to whether a county would be liable in such cases if it engaged in the sale of crushed rock to the public. The court answered this question by saying that counties were unauthorized to engage in the business of crushing rock for sale to the public, and the acts of its officers and agents in undertaking to do so would be *ultra vires,* and that no liability would attach to the county by reason of the non-performance or improper performance of such acts under those circumstances.

The Supreme Court of Iowa had a similar question before it in 1925.[44] The county board of supervisors had leased the seventh floor of the court-house to a post of the American Legion for one year, at an agreed rental of one hundred dollars a month. The contract provided that the county was to furnish elevator service. The plaintiff in this case was injured in the elevator while going to the rooms occupied by the American Legion, on private business connected with the affairs of the Legion. The court, in holding the county not liable in this case for damages, pointed out that it was a well-established rule in that state that ''counties are not liable for torts growing out of the negligent acts of their agents or employees.'' The plaintiff argued, however, that there was liability in this case, since the county was not carrying out any ''governmental powers,'' but that the county in renting a portion of the court-house to the American Legion was engaged in a ''private enterprise,'' and that the county was liable for the acts of its employees in connection with rooms so rented.

The court conceded, ''for the sake of argument,'' that if the board of supervisors had the authority so to lease a portion of the court-house to private parties and collect rent therefor, it would follow that the county might be liable for the negligent acts of its servants and employees in connection with the use of the rented premises. The court held, however, that the county board had no such power under the Iowa law, and ''that the county cannot be held liable for the negligent acts of its employee directly connected with the business of carrying out the said unauthorized contract.''

These cases indicate that the county is not liable in tort for injuries resulting from some proprietary function in which it is engaged, in case it is not authorized by law to engage in such function. In such cases the acts of its officers and agents in carrying out the unauthorized proprietary function are *ultra vires* and no liability attaches to the county, either for their non-performance or improper performance. A different question is presented, however, in case the proprietary function in which the county is engaged is authorized by law.

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[44] *Hilgers v. Woodbury County,* 206 N.W. (Ia.) 660 (1925).

The question of liability on the part of a county when engaged in a proprietary function was considered by the Supreme Court of Wisconsin in a case before it in 1927.[45] Sparks, which had escaped from a steam shovel operated by the county to remove gravel and road material which was being sold by the county, burned adjoining property. The county had been warned by the adjoining property owners of the defective nature of the engine. The court, in holding the county liable, notwithstanding its governmental character, held that the relation of the county to an adjoining owner in such case was that of one proprietor to another. It could see "no reason in justice or morals why a group should not be liable to one to whom its agents have done injury when a member of the group would be liable if he had done the same injury to another member of the group." The growing tendency towards greater liability on the part of municipal corporations was pointed out. Counties had by statute been made liable for mob violence in Wisconsin, which as pointed out by the court, was liability for the failure to perform a purely governmental function, the furnishing of adequate protection to life and property. Taking these factors into consideration, the county was held liable in the present case since the damages resulted not from mere performance of governmental functions but from an act of a county in its proprietary capacity.[46]

In several states, counties have been held liable for their torts when they were acting, not as a governmental agent, but as a private corporation, or where they were performing some special duty voluntarily accepted or assumed.[47] In so far as such functions

[45] *Young v. Juneau County*, 212 N.W. (Wis.) 295 (1927).

[46] Also see *Matson v. Dane County*, 179 N.W. (Wis.) 774 (1920).

[47] *Coburn v. San Mateo County*, 75 Fed. 520 (1896); *Barbour County v. Horn*, 48 Ala. 649 (1872); *Hannon v. St. Louis County*, 62 Mo. 313 (1876); *Comanche County v. Burks*, 166 S.W. (Texas) 470 (1914); *Crawford Co. v. Burks*, 21 Ohio Circ. Ct. N.S. 470; *Theilen v. Tillamoo Co.*, 75 Ore. 214 (1915); *Barfield v. Macon Co.*, 109 Ga. 386 (1899); *Berger v. Kanawha Co. Ct.*, 114 S.E. 750, 92 W. Va. 424 (1922); *Warnock v. Mobile Co.*, 84 So. 396, 17 Ala. App. 206 (1918).

are concerned, the county is no longer a quasi-corporation, and in assuming the privileges must also assume the liabilities as in the case of a municipal corporation. It should be noted, however, that such cases are few, and that in most matters the county still occupies its position as an agent of the state, performing only governmental functions, for which there is no liability in tort. The county has not extended its functions into the proprietary field so far as has the municipal corporation; it still maintains to a large degree its position as an administrative agent of the state, mainly performing political and governmental functions.

As has been pointed out above, the state may by statute make the county liable to suit in the courts. Several states have provided for suits against counties for injuries to person and damage to property resulting from mobs and riots. The laws of New York provide that a city or county shall be liable to a person whose property is destroyed or injured therein by a mob or riot, if the consent or negligence of such person did not contribute to such destruction or injury.[48] All counties in Illinois, Ohio, Wisconsin, New Jersey, and West Virginia, and Philadelphia and Allegheny counties in Pennsylvania, have also been made subject to suits for damages resulting from mobs or riots.[49] South Carolina provides that "in all cases of lynching when death ensues the county where such lynching takes place shall, without regard to the conduct of the officers, be liable in exemplary damages of not less than two thousand dollars, to be recovered by action instituted in any court of competent jurisdiction by the legal representatives of the person lynched."[50]

In several other states, by statutory provisions, counties have been made subject to suit in certain classes of cases. In Maryland, Washington, and Hawaii, a more general liability has been established.[51]

[48] *Cahill's Consol. Laws of N. Y.*, 1923, ch. 26, sec. 71. Cf. *Ely v. Niagara Co.*, 36 N. Y. 297.

[49] *Page's Ohio Gen. Code*, vol. 1, ch. 20; *Comp. Stat. of N. J.*, Col. 4, p. 4381; *Pa. Stat. Complete to 1920*, secs. 15687-89; *Barnes' W. Va. Code*, 1923, p. 2689; *Illinois Laws*, Act of June 15, 1887, Act of May 10, 1905; *Wis. Stat.*, 1925, sec. 6607; *Allegheny Co. v. Gibson*, 90 Pa. 397 (1879); *Champaign Co. v. Church*, 62 Ohio State 318.

[50] *Code of Laws of S. C.*, 1922, vol. 3, sec. 5601; *Carity v. Clarendon County*, 101 S.C. 161; *Dale Co. v. Gunter*, 40 Ala. 118.

[51] *Anne Arundel County v. Watts*, 76 Atl. (Md.) 82 (1910); *Washington Code*, sec. 951; *Arishin v. King Co.*, 173 Pac. 1020, 103 Wash. 176 (1918);

LIABILITY OF THE COUNTY FOR CONTRACTS

The immunity of the state from suits for breach of contract has not been applied generally to counties. In most jurisdictions there is a greater liability to suit on contracts on the part of the county than the state. Thus it is generally held that the county may be sued for breach of contract, even in the absence of express statutory provision to this effect.[52] The Kentucky Court of Appeals has held that "where a county has authority to make a contract, it would follow as an incident that it might sue or be sued concerning it." In a later case the court in referring to this statement said: "That language refers only to an express contract. It was not intended to convey the idea, nor would it be proper to do so, that the right to sue could be implied from an implied contract." More recently the same court has stated that "a county cannot be sued, unless there is a statute which expressly authorizes such an action to be maintained, or the right to do so can be necessarily implied from an express power given, or it may be sued upon an express contract, which the county has authority to make." [53]

In a few jurisdictions there has been an extension to the county of the immunity enjoyed by the state from suits on contracts. The Appellate Court of Indiana has held that: "Boards of county commissioners, in improving highways and entering into contracts for that purpose, are not acting as agents of a municipal corporation. In such cases they are by virtue of the statute acting as agents of the state, and, in the absence of a statute, no action can be maintained against such board for damages because of a breach of such

State v. Superior Ct., 176 Pac. 352, 106 Wash. 268 (1918); *Matsamura County v. Hawaii County*, 19 Hawaii 18, 33. In the last-noted case, the court pointed out that the Hawaiian county did not perform the judicial and governmental functions common in the states, and was an area for local public services.

[52] *Coles County v. Goehring*, 70 N.E. (Ill.) 610 (1904); *Stange v. Esval*, 215 Pac. (Mont.) 807 (1923); *Decatur County v. Roberts*, 126 S.E. (Ga.) 460 (1925); *Oak Grove Const. Co. v. Jefferson County*, 219 Fed. 858 (1915); *American Pipe and Const. Co. v. Westchester County*, 225 Fed. 947 (1915); *Kennedy v. Queens County*, 62 N. Y. S. 276 (1900); *Board of Commissioners of Clark County v. Bentley and Sons*, 134 N.E. (Ohio) 441 (1921); *J. M. Dougan Co. v. Klamath County*, 193 Pac. (Ore.) 645 (1920); *Hillside Securities Co. v. Minter*, 254 S.W. (Mo.) 188 (1923); *Krieger v. Standard Printing Co.*, 231 S.W. (Ky.) 27 (1921); *Howard County v. Pesha*, 172 N.W. (Neb.) 55 (1919).

[53] *Commonwealth v. Boske*, 99 S.W. (Ky.) 316 (1907); *First National Bank v. Christian County*, 106 S.W. (Ky.) 831 (1908); *Breathitt County v. Hagins*, 207 S.W. (Ky.) 713 (1919).

contract.'' The court went on to say that cases involving the right to prosecute actions against an individual or against a municipal corporation for breach of contract were not in point.[54] The Superior Court of Delaware, after pointing out that counties in that state had been held not liable in tort, said: ''There has been no express decision in this state that a cause of action arising *ex contractu* would not lie against the county. But after reflection we are not able to see our way to the conclusion that there is any essential difference or any sufficient reason to except a case *ex contractu* from the general common-law rule that actions will not lie against the county, or the levy court commissioners, who represent the county.''[55]

GENERAL CONCLUSION

While the underlying doctrine supported by the preponderance of judicial opinion is to the effect that the county is merely an administrative division of the state and has a legal status distinctly different from that of a municipal corporation, full consideration of the present status of the American county seems to call for some qualification of this view. Constitutional provisions in many states have imposed important limitations on the power of the legislature over counties. By statutes they are regularly subject to suit in cases of contract, and to some extent in cases of tort; and county boards and officers are not exempt from compulsory judicial processes to secure obedience to the law. Moreover, historical study of the county indicates that even in early days it acted to some extent as an organ of local government as well as an agent of the state. With the development of public services in recent years such local activities have increased, as in the maintenance of hospitals, libraries, parks, and aviation landing fields. These developments indicate that the county is in fact approaching more nearly the position of a municipal corporation, and has been so classified in some states.

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[54] *Buck v. Indiana Construction Co.*, 138 N.E. (Ind.) 356 (1923). The court held that the proper remedy in this case was an injunction to restrain the cancellation of the contract.

[55] *Duncan v. Willits*, 57 Atl. (Del.) 369 (1903).

CHAPTER V

CONSTITUTIONAL PROVISIONS AND POWERS OF THE COUNTY

In the preceding chapter on the legal nature and status of the county in the United States, it has been noted that the general attitude of the courts begins with the doctrine that counties are primarily subdivisions of the state; that in most states they are classed as quasi-corporations, rather than municipal corporations, and as such are subject to the almost complete and plenary power of the state legislature, *except as limited by constitutional provisions.* "Counties are civil and political divisions of the state created and organized for the more convenient administration of government, and are invested with such powers as are essential to the welfare and protection of the public within their boundaries. They are not regarded as municipal corporations in the strict legal sense, but as instrumentalities of the state; and in the exercise of the ordinary governmental functions, they are subject practically to the unlimited control of the legislature, unless restricted by constitutional provision."[1]

In view of this situation it becomes important to consider the extent to which the power of the legislature is limited by provisions in the various state constitutions, and how such provisions affect the position of the county and the character of county government. These show great variation in the different states, both as to their extent and character. The constitutions of the New England states have few provisions dealing with county government; the same is true of certain of the older constitutions of other states.[2]

In about two-thirds of the states there is an article of the state constitution dealing with county government, under such titles as

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[1] *O'Neal v. Jennette,* 129 S.E. (N. C.) 184 (1925); *Watson v. Greely,* 227 Pac. (Cal.) 664 (1924); *City of Pendleton v. Umatilla County,* 241 Pac. (Ore.) 979 (1925); *Franzke v. Fergus County,* 245 Pac. (Mont.) 962 (1926).

[2] E.g., Iowa and Wisconsin.

Counties,[3] County Organization,[4] Counties and County Government,[5] County and Township Organization,[6] Counties and Townships,[7] Counties and County Seats,[8] Organization and Government of Counties,[9] New Counties,[10] Counties and Cities,[11] Counties and Municipal Corporations,[12] Counties, Cities and Towns,[13] and Municipal Corporations.[14] Washington has an article dealing with "County, City and Township Organization," while Michigan has one article with the general title of "Local Government." The most detailed provisions on county government are in the constitutions of California, Colorado, Michigan, Missouri, Oklahoma, and Washington.

The most common constitutional provisions are those relating to county officers, restrictions on the formation of counties and changes in boundaries, on county seats, on special legislation for counties, and on the incurring of debts by counties. Miscellaneous provisions relating to counties and county government are often found in other parts of the constitution, in addition to those found in the article devoted mainly to this subject.

CREATION OF COUNTIES

The principle is now well established that the state may divide its territory into counties for the better administration of the affairs of the state. The power of the legislature to create counties is complete and plenary, except where limited by constitutional provisions. The Supreme Court of Washington has pointed out that "as local subdivisions of the state, counties are created by the sovereign power of the state of its own sovereign will, without any necessary particular solicitation, consent, or concurrent action by the people who inhabit them. They are created by the state under its sovereign and paramount authority, with a view to the policy

[3] Arizona, Colorado, Illinois, Nebraska, Oklahoma, and Texas.

[4] Idaho, West Virginia, and Wyoming.

[5] South Carolina.

[6] Kansas, North Dakota, Ohio, and South Dakota.

[7] Minnesota.

[8] Kentucky.

[9] Virginia.

[10] Maryland and Pennsylvania.

[11] Florida.

[12] New Mexico.

[13] California and Utah.

[14] Alabama, North Carolina, and Montana.

of the state at large, for political organization, and administration of governmental affairs.''[15]

The constitutions of some states create the counties. The power of a constitutional convention to do this was questioned before the Supreme Court of Oklahoma in 1907. In considering the power of the constitutional convention of that state to create counties, the court said: ''In the absence of any express prohibition upon the convention, it had full and complete power to establish and define all the counties in the proposed state, as a necessary incident to the formation of a state government. The power to form a state government clearly implies the power to create and define every county within the limits of the new state; . . .''[16] Where counties are created by name in the state constitution, the legislature has no power to create or to provide for the creation of new counties. When it is found desirable to create new counties in such a case, a constitutional amendment is necessary.

The usual practice is to leave the power to create counties in the hands of the legislature, subject to constitutional limitations. A specific grant of power to create counties is usually given in the constitution of the state, but it seems that a state legislature would have power to form new counties and to alter the boundaries of others without such express grant. This would seem to follow from the legal nature and status of counties as quasi-corporations. While the constitution of Mississippi authorized its legislature to create new counties and to alter the boundaries of existing counties, the Supreme Court of the state has said that ''without an express grant of power in the constitution it would have been entirely competent for the legislature to form new counties and alter the boundaries of others at pleasure.''[17]

Constitutional limitations placed upon state legislatures to create counties are not merely directory, but are mandatory and imperative.[18] Where a county is created contrary to the constitutional limitations, it is regarded as unconstitutional and of no effect.[19] In view of the binding effect upon state legislatures of constitutional provisions relative to the creation of counties, it is well to consider the nature of these limitations.

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[15] *State v. Clausen*, 163 Pac. (Wash.) 744 (1917). Also see *Board of Commissioners v. Mowbray*, 66 N.E. (Ind.) 46 (1903).

[16] *Frantz v. Autry*, 91 Pac. (Okla.) 193, 311 (1907). There was a limitation, however, upon the convention in this respect relative to the Osage Indian Reservation.

[17] *Portwood v. Montgomery County*, 52 Miss. 523, 528 (1876). Cf. *Opinion of the Justices*, 14 Fla. 320 (1873).

[18] *State v. Merriman*, 6 Wis. 17 (1857).

The provisions limiting the power of the legislature to create counties show great variation. It is sometimes provided that no special or local laws shall be passed erecting new counties or changing county lines. The constitutions of some states accomplish this, not by a negative limitation on the state legislature, but by the positive requirement that the legislature shall provide by ''general and uniform laws'' for the formation of new counties and the alteration of county lines. There is the general requirement in some states that counties be created by general and not by special law.

Several state constitutions require the approval of the inhabitants of a proposed new county. In some states a majority vote is sufficient, but some require the approval of more than a majority. Oklahoma requires approval by 60 per cent of the votes cast; South Carolina requires approval by a two-thirds majority. The constitutions of some states provide for the creation of counties only when a certain percentage of the voters within the area proposed to be made into the new county petition. Then the act of the legislature creating the new county must be submitted to the voters.

A common limitation placed upon the legislature in the creation, or in providing for the creation of counties, is that they have a minimum area. The minimum area required varies from 275 square miles in Tennessee to 900 square miles in Texas.[20] In some cases the minimum requirement for the old county is placed higher than for the new.[21]

Another requirement often placed upon the legislature in the creation of new counties is that of minimum population. This varies from 700 in Tennessee to 20,000 in Pennsylvania.[22] The requirement in South Carolina is that the new county have 1/124 part of the population of the state. The minimum population beyond which the old county may not be reduced is sometimes placed higher than the minimum for the new county.[23] The Alabama constitution requires that no new county shall be formed unless it contains sufficient population to entitle it to one representative under the ratio of representation existing at the time of its formation. A similar provision is found in New York.[24]

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[19] *Woods v. Henry,* 55 Mo. 560 (1874).

[20] The minimum area required is as follows: Arkansas, 600 square miles; Illinois, 400 square miles; Iowa, 432 square miles; Idaho, 400 square miles; Kansas, 432 square miles; Louisiana, 625 square miles for the parish; Kentucky, 400 square miles; Maryland, 400 square miles; Michigan, 16 townships; Minnesota, 400 square miles; Missouri, 410 square miles; Nebraska, 400 square miles; North Dakota, 24 congressional townships; Ohio, 400 square miles; Oklahoma, 400 square miles; Oregon, 400 square miles; and South Dakota, 24 townships.

[21] South Carolina, 500 square miles for the old and 400 square miles for the new; Tennessee, 500 square miles for the old and 275 square miles for the new.

The constitutions of four states provide that no new county may be formed unless it has a minimum assessed taxable valuation. This is placed at $1,000,000 in Idaho; $1,500,000 in South Carolina; $2,000,000 in Wyoming; and $2,500,000 in Oklahoma. In two states the minimum requirements beyond which existing counties may not be reduced are placed higher than the minimum requirements for new counties.[25]

In creating, or in making provision for the creation of counties, the state legislature is bound by all provisions of the constitution. Thus where the Louisiana constitution fixed the membership of the lower house of the General Assembly at 116, and further required that each parish have one representative therein, the legislature could create no additional parishes when the membership of the General Assembly reached the constitutional limitation.[26] In the creation of a new county, the intent to do so must be declared in express and clear language: ''The creation of new counties, which means division and elimination of old counties is a matter of too much importance to public interests to be done purely by intendment or implication.'' [27] But, as has been pointed out by the Supreme Court of Wisconsin, since counties are but administrative districts and agents of the state, their ''importance to the state renders it necessary to go as far as can be done to harmonize legislative action with constitutional provisions.'' The courts will seek ''every reasonable mode of reconciliation of the statute with the constitution, and it is only when reconciliation has been found impossible that it will be declared void.'' [28]

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[22] The minimum required in North Dakota is 1,000; Oregon, 1,200; Wyoming, 1,500 *bona fide* inhabitants; Washington, 2,000; Arkansas, 5,000; West Virginia, 6,000; Louisiana, 7,000 for the parish; California, 8,000; Maryland, 10,000; Kentucky, 12,000.

[23] California, 20,000 for the old and 8,000 for the new; Washington, 4,000 for the old and 2,000 for the new.

[24] *Const. of Ala.*, Art. II, Sec. 39; *Const. of N. Y.*, Art. III, Sec. 5.

[25] South Carolina, $2,000,000 for the old and $1,500,000 for the new; Wyoming, $3,000,000 for the old and $2,000,000 for the new.

[26] *Sandaz v. Sanders,* 51 So. (La.) 436 (1910).

[27] *Holmberg v. Jones,* 65 Pac. (Idaho) 563 (1901).

The Supreme Court of Appeals of Virginia has pointed out that acts creating counties, ''being intended merely for the division and arrangement of the territory which they embrace for local municipal purposes and the convenient and economical administration of the government within the same, should not be construed with the same strictness which is to be observed in the construction of a grant or of a contract between individuals affecting rights of property, but that a more liberal and beneficial rule should be adopted the object being to ascertain the true meaning and intention of the legislature . . .'' [29] Some small technical irregularities in an act creating a new county will not necessarily make the whole act setting up the new county invalid.[30]

When a county has been created, and the state, through each of its coördinate branches of government has for nearly four years recognized it as a legal subdivision, the state is estopped from questioning the regularity of the passage of the creating act. Under such circumstances, the Supreme Court of Idaho declined to inquire into the manner of the passage of the act creating the county. The court pointed out that it did not desire to be regarded as announcing the rule that a ''legislative act which is void at the time of its passage, because not passed in the manner required by the constitution, can ripen into a valid act by the mere lapse of time.'' But it was held that an act creating a county was different from an ordinary act of legislation, and that public policy required this application of the rule of estoppel in the case of the creation of counties.[31]

COUNTY BOUNDARIES

The Supreme Court of Alabama has pointed out that, growing out of the nature of counties as quasi-corporations, is the complete and plenary power of the legislature to change their boundaries. ''Counties are political subdivisions of the state, created for public convenience in the administration of government. Their territorial limits are fixed by the legislature, and, outside of constitutional provisions whatever of jurisdiction and powers they possess, are derived from the same source. They have no power or authority to alter or change their territorial limits or boundary lines. This is a right reserved to the legislature of the state, and to be exercised in the way prescribed by the constitution.'' [32]

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[28] *State v. Stevens,* 112 Wis. 170; 88 N.W. 48 (1901).

[29] *Hamilton v. McNeill,* 54 Va. 389, 394 (1856).

[30] *Frost v. Pfeiffer,* 58 Pac. (Colo.) 147 (1899).

[31] *People v. Alturas County,* 55 Pac. (Idaho) 1067 (1899).

This complete and plenary power of the legislature to change the boundaries of its administrative districts is frequently limited in the constitution. This is often done by prohibition upon the power of the legislature to change the boundaries of counties by special act; in other cases such changes can be made only with the consent of the people affected. The legislatures of some states are specifically authorized to change county lines; but in certain cases this can be done only by more than a majority vote.[33] The South Carolina legislature may alter county lines by simple majority vote, but before an existing county line is altered, the question must be submitted to the qualified voters of the territory proposed to be transferred and approved by two-thirds of the votes cast. In other cases the legislature is authorized to provide for the change of county lines only by general and uniform laws; the constitutional limitation is sometimes added that no county line is to be changed without the consent of a majority of the voters in the district which would be in a different county from that prior to the change. The Oklahoma constitution provides that changes in county lines must be approved by 60 per cent of the votes cast in the territory proposed to be transferred to another county and by a majority of the electors of the county to which it is proposed to add such territory.

Another limitation on the changing of county lines is that providing that such lines are not to be altered so as to run within a certain minimum distance of the court-house of the old county. This minimum distance varies from five miles in California to twelve miles in Texas.[34]

In case a county line is moved, several constitutions provide that a new county shall be liable for a just proportion of the existing debts of the county from which the territory was taken.[35] It is provided in some cases that the proportion of liabilities of the old county to be assumed by the new county shall be determined upon the basis of the assessed valuation of property, both real and personal, subject to taxation within the territory taken from any county or counties; in some cases it is provided that the new county shall pay its proportion in a manner prescribed by law. The Washington constitution provides that while a county enlarged or created from territory taken from another county shall be liable for a just proportion of the existing debts and liabilities of the county from which the territory was taken, in such accounting it shall not be charged with any debt or liability then existing, which was incurred in the purchase of any county property or in the purchase or construction of any county buildings then in use or under construction which shall fall within and be retained by the county.[36]

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[32] *Russell v. C. N. Robinson and Co.*, 44 So. (Ala.) 1040 (1907).

[33] A two-thirds vote in Alabama.

[34] It is fixed at 7 miles in Alabama; 8 miles in South Carolina; 10 miles in Arkansas, Illinois, Oklahoma, Pennsylvania, Missouri, and Kentucky; and 11 miles in Tennessee.

While several state constitutions make the part of the county which is severed or stricken off to form a new county or to be joined to another county liable for its proportionate share of the debts of the old county, only three provide for an apportionment of the assets of the old county.[37]

Many cases have been before the courts dealing with the question of the location and legality of county lines. Where lines have been recognized for as long as fifty years, the courts have refused to disturb a boundary unless it is clearly wrong. To overturn lines established and acquiesced in for so long a period "would involve much inconvenience and expense, even the legality of many acts of the citizen and maybe the title to his property. Unless clearly wrong, lines so recognized, acted upon, and acquiesced in will not be disturbed." [38]

NUMBER, AREA, AND POPULATION OF COUNTIES

The existing facts as to the number, area, and population of counties in the United States show a greater variation than is suggested by the variation in constitutional provisions. By 1870 counties had been established in all the states and organized territories; but many new counties have been created, since that time, especially in the states west of the Mississippi River, by subdividing and rearranging the boundaries of the older counties. In most of the states east of the Mississippi (except Georgia and Florida), where there are few constitutional restrictions, the creation of new counties and changes in county boundaries are now seldom made; and the counties in these states may be considered for the most part as permanent local districts.

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[35] California, Colorado, South Carolina, Wyoming, Illinois, Kentucky, Nebraska, Maryland, Montana, North Dakota, Oklahoma, South Carolina, Tennessee, Texas, and Washington.

[36] *Const. of Wash.*, Art. XI, sec. 3.

[37] Louisiana, Oklahoma, and Tennessee.

[38] *Marengo County v. Wilcox County*, 112 So. (Ala.) 243 (1927); also see *Russell v. Robinson and Co.*, 44 So. (Ala.) 1040 (1907); *Hunt County v. Rains County*, 288 S.W. (Texas) 805 (1926).

At the census of 1900 there were 2,852 counties in the United States; in 1923 there were 3,107 counties.[39] The average number of counties for a state is about sixty-five, and most of the more important states have from sixty to one hundred counties each. But there are large variations. The smallest number of counties are in the smallest states—Delaware with three counties and Rhode Island with five. The largest number is 253 in Texas, the state with the largest area. Massachusetts, with fourteen counties, has the smallest number in proportion to population.

Counties also show great variation in area and population. New York County, N. Y., the smallest county in the United States, has an area of twenty-two square miles, while San Bernardino County, California, the largest, has 20,175 square miles.[40] The average area throughout the country is about 975 square miles; but this is larger than the typical area, on account of very large counties in the more sparsely populated Western states. Thus the average area for the counties of Arizona is 8,122 square miles, and for those of New Mexico 3,951 square miles. A more significant figure is the median area of about 600 square miles, which may be taken to represent the typical county. About two-thirds of the counties are between 300 and 900 square miles in area; and the most usual areas are between 400 and 650 square miles.

In the older and more densely populated states east of the Mississippi (except in New England) the average area of counties is less than 600 square miles. In some of the Southern states, the average is noticeably less than this—in Virginia and Georgia about 400 square miles and in Kentucky about 340 square miles. There are also often large variations within particular states. Thus in Illinois there are a number of counties of 1,000 square miles, and others of 200 square miles, the latter having been created before the present constitutional limit of 400 square miles was adopted.

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[39] New counties established 1910-20: Florida, 5; Georgia, 7; Idaho, 21; Kentucky, 1; Louisiana, 4; Mississippi, 3; Montana, 23; Nebraska, 1; Nevada, 2; New Mexico, 3; New York, 1; North Carolina, 2; North Dakota, 3; Oklahoma, 1; Oregon, 2; South Carolina, 2; South Dakota, 3; Texas, 8; Wyoming, 7.

[40] Other large counties are Coconino county, Arizona, with 18,623 square miles; Nye county, Nevada, with 18,294 square miles; and Elko county, Nevada, with 15,484 square miles. Bristol County, R. I., has an area of 24 square miles.

The variations in the population of counties is even greater than the variations in area. Twenty-six counties in the United States had a population below 1,000 in 1920. Eighteen of these were in Texas. Five counties, all in that state, had a population of less than 100 each. Three counties had an estimated population of over 2,000,000 in 1923. Cook county, Illinois, was the largest with 3,286,552; New York county, New York, had 2,267,001; and Kings county, New York, was third with 2,156,687. Five other counties had a population exceeding 1,000,000: Los Angeles county, California; Wayne county, Michigan (Detroit); Cuyahoga county, Ohio (Cleveland); Allegheny county, Pennsylvania (Pittsburgh); and Philadelphia county, Pennsylvania.[41]

The average population for all counties in the United States in 1923 was about 35,000; but the few counties having a population of more than a million makes this much more than a typical figure for the country as a whole. The large counties of the West have smaller populations than the smaller and more densely populated counties of the East; and the small rural counties of the Southern states have a small population. The median county population is about 20,000, which more nearly represents the typical county in the United States.

By far the great majority of counties are distinctly rural. Perhaps a fourth of the whole number contain a city of over 10,000 population; but even in most of these the rural population predominates. In a considerable number of counties the urban population in one or more cities outnumbers the rural inhabitants; while in a limited number of cases the population of a large city and its suburbs will comprise the great majority, or the whole of the county population.

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[41] Bureau of the Census, *Estimates of Population of the United States 1910 to 1923*. California had two counties with less than 1000 in 1920; Colorado had two; Kansas had one; South Dakota had one; Texas had eighteen; Utah had two.

Comparing the American county area and population with the districts in European countries most nearly similar, it will be seen that the former is a less important administrative division. English counties average nearly a thousand square miles in area, and (omitting the large cities, which for administrative purposes are considered as separate counties) 300,000 population. French departments average over 2,000 square miles in area, and 400,000 population. Prussian provinces average over 10,000 square miles in area and nearly 2,000,000 population; and even the circles, although smaller in area (averaging about 300 square miles), have an average population of over 50,000.

There is a growing feeling that there is need of revising county areas so as to increase their size.[42] This would tend to reduce the cost of county government, since there is needless waste and unnecessary overhead cost where county officers serve a small county. With the improvement in highways and the use of new means of transportation it seems that there is little need for counties of less than 1,000 square miles. In recasting county lines an effort should be made to encourage the development of communities with common economic and social interests. County areas might be revised either by a comprehensive reorganization, state-wide in scope, or by consolidation of existing counties where local sentiment is favorable.

Serious study is being given to the consolidation of counties and the revision of county areas in several states. New York and Tennessee are giving more consideration to this problem at the present time than probably any other states. Governor Smith of New York pointed out the advantages of grouping the counties of the state into regions having a common interest. It has been proposed in Tennessee that the ninety-five counties of the state be grouped into eleven units. While the plan of a comprehensive re-grouping of counties is to be preferred to the absorption of small counties by larger counties, the obstacles to carrying out the former plan are such that more progress will probably be made by the latter method.

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[42] Report of the Committee on Rural Government of the American Country Life Association, *Proceedings of the Fourth National Country Life Conference,* 1921, pp. 21-27; J. W. Manning, ''County Consolidation in Tennessee,'' 17 *Nat. Mun. Rev.* 511-514 (1928); J. W. Manning, ''County Consolidation in Tennessee,'' 22 *Amer. Poli. Sci. Rev.* 733-36 (1928); *Report on County Government in Virginia,* prepared by the New York Bureau of Municipal Research (1928); and J. C. Young, ''Governor Smith's Plan for a Modern State,'' *N. Y. Times,* March 11, 1928.

COUNTY SEATS

The county seat is that city or town within a county at which the public affairs of the county are conducted. County buildings, such as the court-house and jail, are erected at the county seat; county offices are located at the county seat and county records are kept there. From the nature of counties as quasi-corporations results also the complete power of the legislature, in the absence of constitutional restrictions, over the location and relocation of county seats. The Supreme Court of Illinois, in considering this question, has pointed out that "were it not for constitutional restrictions, the General Assembly might change county seats at pleasure, or it might alter and change county lines, and even abolish counties and create new ones, to suit public convenience or interest." [43] Unlimited power has not been reserved to the legislature in this matter, however, for in most states its action has been regulated and restricted by constitutional provisions.

The most common provision relative to the location and removal of county seats is that prohibiting local or special legislation for this purpose.[44] Such a provision does not prevent the legislature from classifying counties for purposes of relocating county seats. To say that there can be no classification of counties in such a case would be unreasonable and would beget a worse evil than unlimited special legislation, according to the Supreme Court of North Dakota.[45] There can be no arbitrary classification, however, and the legislature cannot finally settle the location.

Several state constitutions provide that the county seat shall not be removed unless approved by the voters of the county. In some cases a simple majority vote is sufficient,[46] but several require more than a majority vote.[47] When more than a majority vote is required it is usually two-thirds of those voting on the proposition.

[43] *Harris v. Board of Supervisors,* 105 Ill. 445 (1882).

[44] Alabama, Arizona, California, Colorado, Illinois, Iowa, Kentucky, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

[45] *Edmonds v. Herbrandson,* 50 N.W. (N. D.) 970 (1891).

[46] Arkansas, Colorado, Minnesota, Ohio, Kansas, Montana and Wisconsin.

[47] California, Georgia, Kentucky, Missouri, New Mexico, Oklahoma, South Carolina, South Dakota, Tennessee and Utah.

The size of the vote required to move a county seat in some states depends upon whether it is proposed to move the county seat nearer the center of the county; a smaller vote is sufficient in case the point to which it is to be moved is nearer the center of the county. Illinois requires a three-fifths vote to move a county seat unless it is proposed to move it nearer the center of the county; in that case a majority vote is sufficient. A similar provision is found in the constitution of Texas.

The frequency with which the question of the change of location of the county seat may be submitted is also limited in several state constitutions. In at least eight states the proposition cannot be submitted oftener than once in four years;[48] once in five years in Missouri and South Carolina; once in six years in Idaho; once in eight years in New Mexico; and once in ten years in Illinois and Oklahoma.

The provisions in the Idaho constitution are illustrative of the more stringent constitutional requirements to remove county seats. It provides that they may be moved only upon a petition of a majority of the qualified electors, followed by a two-thirds vote of the qualified electors favoring the proposal. The constitution of Georgia provides that county seats may not be changed except by a two-thirds vote of the qualified electors of the county and a two-thirds vote of the General Assembly. Michigan requires a two-thirds vote of the county board of supervisors and a majority vote of the electors of the county.

Where a county contains a city of considerable size the county seat will generally be located there. But there are cases where a small village or city near the center is the capital of a county containing a much larger city. This is the case in Calhoun county, Michigan, containing the city of Battle Creek, where the county seat is the smaller city of Marshall. This is also the case in St. Clair county, Illinois, with the county seat at Belleville, while East St. Louis has a much larger population.

Some counties have more than one county seat. In several New England states courts are held at two or more places in most counties. At least two Iowa counties have two county seats; and Sebastian county, Arkansas, has two court-houses.

In new agricultural sections the location of the county seat, concentrating there the public business, will often determine what is to be the principal community in the county. On this account there is often an eager rivalry to secure the advantage. In earlier years there were many contests for the removal of county seats from one town to another; but in later years the problem of removal is seldom brought up and there have been few changes.

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[48] Alabama, California, Colorado, Mississippi, Montana, South Dakota, Utah and Washington.

As a general rule, the county seat is not merely the lot and building used for public purposes, but the city or village in which they are located. But in several cases it has been held by the courts that territory annexed to such a city or village after the location of the county seat is not included; and that to erect new county buildings in the annexed territory would constitute a removal of the county seat, for which a popular vote was necessary.[49]

CITY-COUNTY CONSOLIDATION

An important problem in connection with the creation, alteration and abolition of counties is that of city-county consolidation. This problem will be discussed more fully in another chapter,[50] but it seems useful to consider some aspects as a phase of the formation of counties.

A number of large cities in the United States are coterminous with counties; and there has been some consolidation of city and county government. New York City now includes five counties. Baltimore, Philadelphia, Boston, St. Louis, New Orleans, Denver, and San Francisco are either distinct counties, or substantially in this position, as are also cities in Virginia.[51]

Several state constitutions authorize the organization of larger cities as separate counties. In Michigan and Missouri, cities of over 100,000 may be so organized, and in Minnesota cities of over 20,000.[52] Constitutional amendments also authorize city-county consolidation in California,[53] Montana, Pennsylvania, and Georgia. Attempts to secure a similar provision in Ohio have not been successful.

In some of these states and in others, there have been active efforts for city-county consolidation in recent years but thus far without definite results. A city-county consolidation charter for Alameda County, California, was defeated in 1922; one for Silver Bow County (Butte), Montana, in 1924; one for Multnomah County (Portland), Oregon, in 1927; and a plan to unite the present city of St. Louis with St. Louis County in a unified government in 1926.[54] A plan for a federal system of local government for Allegheny County, Pennsylvania, including the city of Pittsburgh, was defeated by popular vote in 1929.[55] The subject has also received consideration in Cleveland, Milwaukee, and New Jersey.[56]

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[49] *Marengo County v. Martin*, 32 So. (Ala.) 669 (1902); *State v. Harwi* 14 Pac. (Kas.) 158 (1887).

[50] See Chapter XXIV.

[51] *Illinois Const. Conv. Bull.* (1920) No. 11.

[52] *Const. of Michigan*, Art. VIII, sec. 2; *Const. of Mo.*, Art. IX, sec. 16; *Const. of Minn.*, Art. XII, sec. 2.

[53] *Const. of Calif.*, Art. XI, secs. 7-8½.

With the development of metropolitan cities which contain much the greater part of the population of the county in which they are located, there is a duplication of machinery and an overlapping of functions, causing waste and opening the way to conflict of authority. The cumbersome system of county government becomes more complex in such counties; and improvements in the structure and administration of city government are hampered by the unsatisfactory county system.

There are, however, serious obstacles to proposals for city-county consolidation—constitutional, legal, political, special interests, and local sentiment. While consolidation has usually secured increased efficiency and financial economies, other difficulties have arisen, especially as the city-county overflows its boundaries.

Other methods for meeting particular local problems in metropolitan regions have been the creation of special districts, and voluntary coöperation.

CONSTITUTIONAL POWERS OF COUNTIES

State constitutional provisions show no uniformity of practice relative to the organization and method of granting powers to counties. In some states the legislature is merely authorized to provide a uniform system of county government. The Wisconsin legislature is authorized to establish but one system of county government which shall be "as nearly uniform as practicable." The Florida constitution authorizes the legislature to establish a uniform system of government which is to be applicable "except in cases where local or special laws are provided by the legislature that may be inconsistent therewith." State legislatures in at least twenty states are forbidden to pass local and special laws regulating the affairs of counties.[57]

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[54] 11 *Nat. Mun. Rev.* 204,406 (1922); *ibid.*, vol. 12, p. 310 (1923); *ibid.*, vol. 13, p. 605 (1924); *ibid.*, vol. 15, pp. 366, 731 (1926); *ibid.*, vol. 16, p. 607 (1927).

[55] 21 *Amer. Pol. Sci. Rev.* 365 (1927); *ibid.*, vol. 22, p. 121 (1929); M. L. Faust, "Voters Turn Thumbs Down on Pittsburgh's Metropolitan Charter," 18 *Nat. Mun. Rev.* 529 (1929).

[56] 12 *Nat. Mun. Rev.* 156, 691 (1923); *ibid.*, vol. 13, p. 319 (1924); *ibid.*, vol. 14, p. 435 (1925).

The constitutional provisions on the subject of county government have been such that in many cases they have unduly tied the hands of state legislatures. One writer has referred to the "legal refractoriness of the problem" of county government on account of the detailed constitutional provisions.[58] It may well be questioned whether the constitutional requirement of a uniform system of county government for the whole state is a proper one. There are those who feel that the state legislature should have the power to classify counties and legislate for classes rather than to treat all counties as having the same problems. This has been done by the legislatures of some states. Governor Johnson of California, in his inaugural message in 1911, pointed out that the legislature had classified the counties of the state into fifty-eight classes, a number equal to the number of counties in the state. But this abuse of the principle does not condemn it. The Pennsylvania legislature, at its 1919 session, divided the counties of that state into eight classes, according to population, for the purposes of legislative enactment. All cases of classification seem to be for legislative purposes, however, and not for purposes of governmental organization.[59]

The general power of the legislature to classify counties has been upheld when questioned before the courts.[60] The Supreme Court of South Dakota, in considering the effect of a constitutional provision of that state prohibiting special legislation relative to counties, held that it did not prevent classification, provided the classification was not arbitrary. "To say that no classification can be made under such an article would make it one of the most pernicious provisions ever embodied in the fundamental law of a state. It would paralyze the legislative will. It would beget a worse evil than unlimited special legislation,—the grouping together without homogeneity of the most incongruous subjects under the scope of an all-embracing law.'' But any plan of classification must be natural, not arbitrary: ''It must stand upon some reason, having regard to the character of the legislation.''[61]

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[57] California, Colorado, Idaho, Illinois, Indiana, Kentucky, Minnesota, Missouri, Montana, New Mexico, Nevada, New Jersey, North Dakota, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, West Virginia, Wyoming.

[58] Richard S. Childs, "Counties," in the *Explanation and Defense of Model State Constitution.*

[59] Also see *Const. of Colo.*, Art. XIV, sec. 15; *Rev. Stat. of Ariz.*, 1913, sec. 3227.

[60] *City of Astoria v. Cornelius*, 240 Pac. (Ore.) 233 (1925); *People v. McFadden*, 22 Pac. (Cal.) 851 (1889).

In Illinois and Ohio, laws classifying counties on the basis of population in such a way that there was only one county in a certain class have been held to be unconstitutional as special legislation.[62] The Supreme Court of Illinois held that a classification of counties ''which makes it absolutely certain but one county in the State can avail itself of the benefits of a law applicable to such class, cannot but be regarded as a mere device to evade the constitutional provision forbidding special legislation.''[63] The Supreme Court of Wisconsin has held that absolute uniformity is not required by the constitution of that state, but only that the system of county government be ''as *nearly* uniform *as practicable.''* An act of the legislature, however, which ''destroys the *unity* of the system, or which unnecessarily interferes with its uniformity in any material respect, is not a valid law.''[64]

Thus at the present time the legislatures of a majority of the states are prohibited by constitutional provisions and judicial decisions from complete freedom of action in classifying counties. The Supreme Court of Utah has held that a uniform system of county government in that state is ''a system or plan of government of the several counties in the state which is uniform, so that its several parts shall be applicable to each county.''[65] Under such a constitutional limitation, according to the Supreme Court of Washington,[66] the legislature is prohibited from abolishing some particular office in a particular county or in a particular class of counties.

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[61] *Edmonds v. Herbrandson,* 50 N.W. (N. D.) 970 (1891). Also see *Strong v. Dignan,* 69 N.E. (Ill.) 909 (1904); *Kraus v. Lehman,* 83 N.E. (Ind.) 714 (1908); *Murray v. Board of Commissioners of Ramsey County,* 84 N.W. (Minn.) 103 (1900); *State v. Ellet,* 23 N.E. (Ohio) 931 (1890); *Sutton v. State,* 36 S.W. (Tenn.) 697 (1896).

[62] *Strong v. Dignan,* 69 N.E. (Ill.) 909 (1904); *State v. Ellett,* 23 N.E. (Ohio) 931 (1890).

[63] *Devine v. Commissioners of Cook County,* 84 Ill. 590 (1877). But this does not make invalid a classification in which there may be only one county at the time when the law is passed.

[64] *State v. Abert,* 32 Wis. 403 (1873).

[65] *State v. Standford,* 66 Pac. (Utah) 1061 (1901).

Another method of meeting the varying problems of counties in a state is that of optional forms of county government. This would enable the state to require certain standards of its administrative districts and at the same time allow the counties to select the form of governmental organization which would most nearly suit their particular problems and needs. In Illinois, Missouri, Nebraska, and North Dakota it is optional with the voters of the county whether they will have the township supervisor system or the county commissioner system.[67] The new constitution adopted in Louisiana in 1921 authorized the legislature of that state to provide optional forms of parochial government.[68] A constitutional amendment empowering the state legislature to provide optional forms of county government was recommended for Virginia in 1924 by the Commission on Simplification and Economy in State and Local Government.[69]

A basis for a broad grant of powers to counties may seem to be offered in the provision of the Michigan constitution that: "The legislature may by general law confer upon the boards of supervisors of the several counties such powers of a local legislative and administrative character, not inconsistent with the provisions of this constitution, as it may deem proper." [70] A similar provision in the Kansas constitution authorizes the legislature to confer upon tribunals transacting the county business such powers of local legislation as it may deem expedient.[71] In practice, however, no important powers have been conferred under these provisions.[72]

More direct and positive grants seem to be conferred by the constitutions of California, Idaho, and Washington,[73] under which counties are authorized to make and enforce within their limits such local, police, sanitary, and other regulations as are not in conflict with general laws. But there is in such provisions no grant of power to determine the form of governmental organization and little room for the exercise of effective powers. The legislature may still enact laws on the subject of county government, and such state laws take precedence over local regulations. None of these provisions grants authority comparable with that in the constitutional grants of home rule to cities.

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[66] *State v. Fleming,* 153 Pac. (Wash.) 347 (1915).

[67] *Const. of Ill.,* Art. X, secs. 5-6; *Const. of Mo.,* Art. IX, secs. 8-9; *Const. of Neb.,* Art. IX, sec. 5; *Const. of N. D.,* secs. 170-171.

[68] *Const. of La.,* Art. XIV, sec. 3.

[69] 14 *Nat. Mun. Rev.* 690 (1925). See also Proposed Illinois Constitution of 1922.

[70] *Const. of Mich.,* Art. VIII, sec. 8; Cf. *Const. of 1850.*

[71] *Const. of Kas.,* Art. II, sec. 21.

[72] By act of 1927 all counties in Wisconsin with a population of over 250,000 (Milwaukee County) are "vested with all powers of a local, legislative and administrative character." Limitations are placed upon the county boards of such counties in exercising these powers in any town, city, or village. *Wis. Stat.,* 1927, vol. 1, ch. 59.08. This may be considered a statutory grant of home rule to counties.

Proposals for constitutional provisions for county home rule have been made, and have been adopted in a few states. These have been supported on the ground that, when consideration is given to the great variation of counties in area, population, and the resulting governmental problems, the principle of home rule, which has been used in the field of municipal government since 1875, has many merits. The movement for county home rule took what might be considered official form when, in 1911, Governor Johnson of California, in his first message to the legislature of that state, recommended that a constitutional amendment be proposed providing for county home rule. The legislature adopted an amendment based on the governor's suggestions, and this was approved by the voters of that state at a special election.[74]

The California amendment provides for the election of a county board of fifteen freeholders to draft a county charter. This election may be held pursuant to an ordinance passed by the board of supervisors or to an initiative petition signed by 15 per cent of the qualified electors. In addition to the permissive powers granted to counties, the amendment requires the incorporation of certain provisions in the charters. This is in keeping with the principle that counties are agents of the state for carrying out state policies. The new charter must, after publication, be submitted to the voters of the county, and for adoption requires a majority of the votes cast. It is then submitted to the state legislature for approval. Five

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[73] *Const. of Calif.*, Art. XI, sec. 11; *Const. of Idaho*, Art. XII, sec. 2; *Const. of Wash.*, Art. XI, sec. 11.

[74] *Journal of the Senate, California*, 1911, Extra Session, p. 67; E. J. Miller, ''A New Departure in County Government,'' 7 *Amer. Pol. Sci. Rev.* 411-419 (1913); Lewis R. Works, ''County Home Rule in California: The Los Angeles County Charter,'' 47 *Annals of Amer. Acad. of Pol. and Soc. Sci.* 229-236 (1913).

California counties have adopted charters under the power thus granted.[75]

In 1915 Maryland adopted an amendment providing that the city of Baltimore or any county of the state might adopt a home rule charter.[76] The amendment stipulates that on the demand of the mayor and council of Baltimore, or on petition of not less than 20 per cent of the voters of that city or of any county, the board of election supervisors shall provide for the election of a charter board of eleven members. The amendment, as in the case of that in California, makes mandatory the inclusion of certain things in the charter. Home rule charters must be submitted to the voters and adopted by a majority vote of those voting thereon.

A similar amendment was introduced in the Ohio General Assembly at the session in 1919 but failed of passage.[77] A step towards county home rule was taken in New York when the voters of that state adopted a constitutional amendment empowering the legislature to provide new forms of government for Westchester and Nassau counties, subject to the approval of the voters in those counties. The amendment provided that the charter might include the transfer of town functions to the county. It was also made mandatory that the charter specify the manner in which the county might revert to its old type of government, and there was the negative limitation that the charter should not take from the legislature the power of amendment or modification.[78]

A constitutional amendment was approved by the voters of Arkansas at the election in October, 1924, which might have been considered to confer some power of home rule. This provided that "counties and municipalities shall have the same power of legislation of every character in and for their respective municipalities and counties, the manner to be provided by law, but no local legislation shall be enacted contrary to the constitution of (or) contrary to any general law of the State.''[79] The amendment was, however, declared invalid by the Supreme Court of the state in a case before it in June, 1925, on the ground that it was not adopted in accordance with the rules prescribed by the constitution.[80]

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[75] Los Angeles and San Bernardino in 1913; Butte and Tehama in 1917; and Alameda in 1926.

[76] *Const. of Md.*, Art. XI A, secs. 1-7. Also see W. L. Wanless, "County Home Rule in Maryland," 8 *Nat. Mun. Rev.* 259 (1919).

[77] For text of this amendment see *Ill. Const. Conv. Bull.*, 1920, No. 12, p. 1075. For sentiment in Michigan for county home rule see C. Roy Hatten, "The Movement for County Government Reform in Michigan," 9 *Nat. Mun. Rev.* 696 (1920).

[78] Robert Moses, "Home Rule for Two New York Counties," 11 *Nat. Mun. Rev.* 5-7 (1922). For plans proposed see 11 *Nat. Mun. Rev.* 393 (1922), and Mary C. Hamilton, "Improving Our County Government," 30 *Amer. City* 251-53 (1924).

It seems open to question whether home rule should be granted to counties to the same degree that it has been granted to cities. In the case of counties any home rule grant should stress the freedom to select their form of governmental organization rather than freedom in the exercise of governmental powers. The position of the county as a state agent makes it advantageous to have some degree of uniformity throughout the state. There are certain officers, as sheriffs and judges, whose duties are such that the state should retain some degree of control over them. They are primarily state officers, engaged in carrying out state law, and for the benefit of the state at large. But there still remains a field in which a greater degree of local control might well be left to the counties.[81]

MISCELLANEOUS CONSTITUTIONAL PROVISIONS

State constitutions often contain many other provisions dealing with county government. There are various provisions concerning the internal organization and administration of the affairs of the county, as the officers, their selection, powers, and duties. In several states there are provisions dealing with township organization. The provisions which serve to limit the legislature more than any others are those dealing with county finances—the assessment and collection of taxes, debt limitations, and the accounting for public funds. In the matter of county finance and the regulation thereof, the legislature does not have complete control. The legislature is also limited in its power to fix salaries and fees for county officers; to prescribe the powers and duties of county officers; to fix their qualifications and term of office; and to provide for their removal. These are in many instances provided for in the constitution, or the power is conferred upon the legislature to provide for them but subject to serious limitations. Not only are there constitutional limitations upon the legislature relative to its control over counties, but the limitations upon the counties themselves serve as a check upon the legislature. This is true of such provisions as that counties are not to become subscribers to or owners of stock in any railroad, private corporation, or association.

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[79] *Acts of Ark.*, 1925, p. 1088, Referred to in Frederic A. Ogg and P. Orman Ray, *Introduction to American Government* (3rd. ed., 1928), p. 882, as a county home rule amendment.

[80] *McAdams v. Henley*, 273 S.W. (Ark.) 355 (1925).

[81] On this point see speech of State Senator Hewitt of California before the 18th Annual Meeting of the National Municipal League. 2 *Nat. Mun. Rev.*, Supp. 2-4 (1913).

The operation and effect of these miscellaneous provisions will be considered more fully in later chapters. Those relating to internal organization and administration will be considered in connection with the various officers; those dealing with the financial affairs of counties, limiting their power to tax and borrow and outlining their financial procedure, will be discussed in the chapters on financial administration.

CONCLUSIONS

A study of the constitutional provisions dealing with county government indicates that the charge that the lack of attention to county government by reformers and state legislatures is due to the "legal refractoriness of the problem"[82] is probably well founded. The powers and structure of county government are laid down in state constitutions in greater detail than is necessary or advisable. The suggestions made by the framers of the Model State Constitution relative to the proper constitutional provisions on county government are of interest in this connection.

It is first provided that: "No new county shall be created and no existing county shall be subdivided unless the question is submitted to the duly enrolled or registered voters of the district or districts affected, at a regular or specially called election, and is approved by a majority of such voters voting thereon in the district or districts affected." It seems unnecessary and of doubtful wisdom to place in a constitution detailed requirements as to the minimum area, population, or assessed valuation of counties. While there have probably been cases of abuse in the formation of counties to create political offices, the requirements now found in many constitutions are too rigid and arbitrary. It seems that minimum area, population, or assessed valuation cannot be laid down as arbitrary and infallible criteria as to whether new counties should be created. The requirement of approval by a majority vote of the voters residing in the district or districts affected, seems to safeguard the process adequately without arbitrarily making the creating of new counties too inflexible.

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[82] Richard S. Childs, "Counties," in the *Explanation and Defense of the Model State Constitution.*

In regard to the powers and organization of county government, the Model State Constitution provides that: ''The powers and duties of county government shall be defined by general law, applicable to all counties, and optional plans for the organization of county government may be provided by law, to be effective in any county when submitted to the legal voters thereof and approved by a majority of those voting thereon.'' This insures minimum standards for the state's agents or administrative districts in carrying out its policies by providing that the laws defining county powers and duties shall be applicable to all counties. It also allows the governmental organization to be made to suit the situation in the various classes of counties by enabling the legislature to provide optional plans of county government, to be effective in a county when adopted by a majority vote of the voters therein. This application to the field of county government of a method which has been successfully used in legislating for cities seems to offer possibilities of improvement.

Provision is also made in the Model State Constitution for home rule for counties. It is provided that: ''Any county shall have the power to frame, adopt and amend a charter for its government and to amend any existing law relating to its local organization, such charters and amendments to take effect when submitted to the legal voters of the county and approved by a majority of those voting thereon. The manner of exercising the powers herein granted may be regulated by general law.'' This provision again does not deviate from the principle that the county is in many respects an administrative district of the state; home rule as here proposed applies to organization and not to powers, for, as was pointed out above, the powers and duties of counties are to be regulated by general law, applicable to all counties. It seems unnecessary, and probably unwise, to place detailed provisions in a state constitution as to the process to be followed in adopting a home rule charter. Sufficient safeguard is provided in the requirement that the charter must be submitted to the voters and approved by a majority of those voting thereon.

There is also a section in the Model State Constitution dealing with city-county consolidation. This provides that ''Any county with a population of over ——— may be authorized by law to provide in its charter for a consolidated system of municipal government, providing for the powers and duties of county, city, and other municipal authorities within the county and abolishing all officers whose duties are otherwise provided for.'' There is no positive grant of the right of city-county consolidation; the legislature is merely empowered to authorize such consolidation and to provide for the powers and duties of officers in such consolidated government. This plan seems preferable to the detailed constitutional provisions found in California. As experience and practice within a state indicate needed changes in the methods of city-county consolidation the legislature will be free to make such changes without the passage of a constitutional amendment.

These simple provisions of the Model State Constitution offer valuable suggestions as to the proper provisions to be placed in a state constitution on the subject of county government. They insure to the state adequate control over its administrative agents without requiring an undue uniformity of organization. Again, they are so general that they will enable the legislature to provide for changed conditions that may arise. Part of the responsibility for the present unsatisfactory situation in the field of county government rests upon the framers of state constitutions, who by detailed provisions on the subject have prevented state legislatures from successfully coping with this problem.

CHAPTER VI

JUDICIAL AND ADMINISTRATIVE CONTROL

JUDICIAL CONTROL

SOME indication of the important place held by the judicial courts in determining the position of the county has appeared from the extent to which judicial opinions and decisions have been cited in the chapters on the legal status of the county and constitutional provisions relating to counties. These show that the underlying principles of state and county relations are determined by the views of the judges, and that the effect of constitutional and statutory provisions are often affected by judicial interpretation.

Questions as to the legal powers and duties of counties and county officers may be brought before the courts by proceedings begun by the county or its officers, or by suits against them. If the court finds that an act is beyond the legal competence of the officer, it will be declared invalid. As has been noted, the county is usually held to its contract obligations; and in some cases has been held liable for the torts of its officers and employees. In other cases county officers have been held personally responsible for illegal acts. If the court finds that an officer fails or refuses to perform a ministerial duty imposed upon him by law, a writ of mandamus may be issued to compel the performance of the duty. Injunctions may be issued in equity cases to restrain action. Persons held in custody without proper cause may be released by writ of habeas corpus.

Special Writs

Some cases may be noted to illustrate the authority exercised by the courts to control the actions of county officers in the sphere of their ministerial duties by writs of mandamus and injunction. Special attention will be given to cases against county boards in the exercise of taxing and other powers similar to those of state legislatures, which have not been subjected to the same control by the courts.

A series of cases before the Supreme Court of the United States in the period following the Civil War established the rule that writs of mandamus would be issued to compel a county board to levy a tax to pay judgments for payments due on county bonds issued to aid in the construction of railroads.[1] In one case, the writ was upheld in the face of an injunction by a state court to restrain the tax levy.

State courts have also issued writs of mandamus to county authorities in the management of financial affairs. Where the commissioners of a county authorized the withdrawal of money from the general fund to create an ''incidental fund'' not authorized by law, such action has been held to be illegal. In the case of a judgment against the county, inquiry has been made to determine whether the claim was legally payable out of certain taxes or funds, and within the constitutional and statutory restrictions on the amount and purposes of tax levies. Writs of mandamus have been upheld to compel county supervisors or commissioners to call a local tax election on petition, to provide a mother's pension fund, to order the county treasurer to repay taxes collected illegally, and to turn over to road commissioners the proceeds of bonds belonging to them.[2]

While state courts have declined to issue a writ of mandamus to compel a state legislature to reapportion the legislative districts, as provided by the state constitution, the Supreme Court of Kansas has held that where a state law provides that the county commissioners shall divide the county into commissioner districts which shall be ''as compact and equal in population as possible,'' mandamus will lie to compel the county commissioners to act where the county has not been redistricted for fourteen years and where the population of one of the districts had increased so that it contained a majority of the entire population of the county.[3]

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[1] *Riggs v. Johnson Co.* (Iowa), 6 Wall. 166 (1867); *Weber v. Lee Co.* (Iowa), 6 Wall, 210 (1867); *U. S. v. County of Clark* (Mo.), 96 U. S. 211 (1877); *U. S. v. County of Macon* (Mo.), 99 U. S. 582 (1878); *Macon Co.* (Mo.) *v. Huidekoper,* 99 U. S. 595 (1878); *Knox Co. v. U. S.* etc., 109 U. S. 229 (1883); *Macon Co.* (Mo.) *v. Huidekoper,* 134 U. S. 332 (1890). Cf. F. Wickizer, ''A County Thirty-one Years in Rebellion,'' 73 Century, 928 (1907).

[2] *People v. Commissioners,* 1 Nev. 460 (1865); *State v. Hopkins* 41 Pac. (Wash.) 906 (1895); *Atchison* etc. *Ry. Co. v. Territory,* 72 Pac. (N. M.) 14 (1903); *Startup v. Harrison,* 203 Pac. (Utah) 637 (1912); *Com. Nat. Bank v. Supervisors,* 150 N.W. (Ia.) 704 (1915); *Burke Co. Rd. Comrs. v. Bd. Comrs.* 115 S. E. (N. C.) 54 (1922); *Bd. of Educ. v. Bd. of Comrs. Yancy Co.,* 127 S.E. (N. C.) 692 (1925).

It has been held that mandamus will lie against county commissioners or supervisors to compel them to make an award in eminent domain proceedings, to repair a bridge, to enforce a statute for fencing pasture lands, to consider a petition to increase the number of county commissioners, to publish a statement of claims audited, to act on a petition for the alteration of a highway, to provide a suitable court-house and jail, and to keep the jail in a condition that will not endanger the lives or health of the prisoners, to fill a vacancy in the office of justice of the peace, and to reconvene and perform a duty required or correct an error.[4]

Injunctions to restrain county officers seem to be somewhat more frequent than mandamus proceedings to compel action. On proper application a court of equity may restrain the organization of a county where the act creating the county is illegal and void, or where the constitutional requirements to authorize the formation of new counties have not been followed.[5] The officers of a county or town may be restrained by injunction where they are proceeding illegally to the irreparable injury of the complainant. In a number of cases injunctions have been issued to prevent the illegal removal of the county seat, or the sale of the public square.[6]

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[3] *State v. Jones,* 220 Pac. (Kas.) 275 (1923). But cf. *State v. Tindell,* 210 Pac. (Kas.) 619 (1922), where a mandamus to compel redistricting was denied, as within the discretionary powers of the board.

[4] *Dodge v. Essex Co.,* 3 Metcalf (Mass.) 380 (1841); *State v. Bramwell,* 18 Pac. (Kas.) 952 (1888); *Perry v. Chatham County,* 41 S.E. (N. C.) 787 (1902); *State v. Menzie,* 97 N.W. (S. D.) 745 (1903); *State v. Burley,* 61 S.E. (S. C.) 255 (1908); *Railroad Co. v. Scott Co.,* 63 S.E. (Va.) 412 (1909); *Platnauer v. Sacramento Co.,* 225 Pac. (Calif.) 12 (1924); *People v. Chenango,* 8 N. Y. 317 (1853); *People v. Brinkerhoff,* 68 N. Y. 259 (1877); *State v. Chouteau Co.,* 118 Pac. (Mont.) 804 (1911); *State v. Mullendore,* 161 Pac. (Mont.) 949 (1916); *People v. Board of Supervisors,* 128 N.E. (Ill.) 645 (1920); *Commissioners of Jasper Co. v. Persons,* 116 S.E. (Ga.) 538 (1923).

[5] *Bradley v. Commissioners,* 2 Humphr. (Tenn.) 428 (1841); *Henry v. Steele,* 28 Ark. 455 (1873); *Segars v. Parrott,* 30 S.E. (S. C.) 273 (1898). But an injunction has been denied, where the charges made had not been brought to the notice of the official vested with power and duty in the matter. *Martin v. Lacy,* 39 Kas. 703 (1888), 18 Pac. 951. After organization the question of legality may be made the subject of inquiry by quo warranto. *Henry v. Steele,* 28 Ark. 455 (1873); *State v. Merriman,* 6 Wis. 14 (1857); *State v. Ford Co.,* 12 Kas. 441 (1874).

[6] *Markle v. Clay Co.,* 55 Ind. 185 (1876); *Sweatt v. Faville,* 23 Ia. 321 (1867); *McMillen v. Butler,* 15 Kas. 62 (1875); *Gale v. Stegner,* 100 N.W.

In many cases it has been held that a tax payer may sue a county in equity to restrain the illegal creation of a debt to be paid by taxation, or the wrongful and illegal appropriation, expenditure or disbursement of county funds. More specifically, injunctions have been issued against the creation of a debt in excess of the constitutional or statutory debt limit, the award of a contract in an illegal manner, the entering into or the performance of an illegal contract, the allowance of a claim not legally chargeable to the county, the negotiation or issue of unauthorized or illegal bonds, the holding of a bond issue election without preliminary proceedings required by statute, the levy or collection of an illegal tax, the retention by the treasurer of commissions not authorized by law, the issue of unauthorized or illegal warrants, and unauthorized payment of money on warrants, contracts, or otherwise.[7]

Among other things, injunctions have also been issued to restrain county authorities from laying out a road over private property, interfering with a railroad franchise, fixing water rates, acting as a court to try road defaulters, and spending money on a new road out of bonds authorized for an old road between the same termini.[8]

On the other hand, judicial review of the discretionary powers and acts of county officers has very limited scope. It has generally been held that ''when authority to act appears, a wide discretion in acting should be accorded to county commissioners, where no question of fraud is presented. The courts will not control the discretionary acts of county commissioners done within their statu-

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(Minn.) 101 (1904); *Solomon v. Fleming*, 51 N.W. (Neb.) 304 (1892); *Rickey v. Williams*, 36 Pac. (Wash.) 480 (1894); *Krieschel v. Snohomish Co.*, 41 Pac. (Wash) 186 (1895); *Atkinson v. Roosevelt Co.*, 214 Pac. (Mont.) 74 (1923); *Sturmer v. Randolph Co.*, 26 S.E. (W. Va.), 532 (1896); *May v. Fox*, 80 N.W. (Ia.) 405 (1899).

[7] 15 *Corpus Juris*, ''Counties,'' secs. 262, 353. Cf. *Dyer v. Erwin*, 33 S.E. (Ga.) 63 (1899); *Dixon v. Greene Co.*, 25 So. (Miss.) 665 (1899); *Henry Co. v. Gillies*, 38 N.E. (Ind.) 40 (1894); *Jones v. O'Connell*, 107 N.E. (Ill.) 731 (1914); *Grannis v. Blue Earth Co.*, 83 N.W. (Minn.) 495 (1900); *Johnson v. Norman Co.*, 101 N.W. (Minn.) 180 (1904); *Worsnington v. Pierce*, 30 Pac. (Ore.) 450 (1892); *Denver v. Pitcher*, 129 Pac. (Colo.) 1015 (1913); *State v. Hager*, 2 S.W. (Mo.) 844 (1887); *Sanderson v. Texarkana*, 146 S.W. (Ark.) 105 (1912); *Tullos v. Church*, 171 S.W. (Texas) 803 (1914).

[8] *Welton v. Dickson*, 57 N.W. (Neb.) 559 (1894); *Pueblo* etc. *R. Co. v. Powers Co.*, 38 Pac. (Colo.) 112 (1894); *Montezuma Co. v. Montezuma Water* etc. *Co.*, 89 Pac. (Colo.) 794 (1907); *Lewis v. Turner*, 76 S.E. (Ga.) 999 (1912); *Cruse v. Police Jury*, 92 So. (La.) 679 (1922).

tory powers where fraud or abuse of discretion is not clearly shown.''[9] There must be either a complete disregard of a positive duty as prescribed by statute or a clear abuse of discretion before the courts will interfere. The presumption is that the officers exercised their discretion fairly and reasonably, and so long as the action is ''within the express or implied terms of the act granting the power to them, and there is an absence of 'fraud, corruption, or unfair dealing,' their acts will not be controlled by any judicial tribunal.''[10] As pointed out by the Supreme Court of Nebraska, ''infallibility of judgment is never expected nor required. The most that can be required is that it act in good faith, and not in an unwarranted and arbitrary manner and without regard to the evidence before it.''[11]

A county board will not be compelled by mandamus to consider in any particular order conflicting petitions as to the area to be included in a proposed new county. The determination of the location of a disputed boundary line between two towns by resolution of a board of supervisors has been held to be legislative, and not judicial in character, and therefore not reviewable by the courts. The action of a county board in combining magisterial districts has been held to be an exercise of purely legislative or governmental functions over which the courts have no control, unless complainants have suffered or will suffer a private or peculiar injury. The determination by county commissioners whether certain lands shall be included in a drainage district is a discretionary power with which the courts will not interfere unless there is a clear abuse.[12]

The courts have also refused to interfere with the discretion of county authorities in levying taxes, unless there is a clear abuse of power or discretion. Thus an injunction has been denied to annul a county tax levy and restrain its collection and compel a levy in conformity with the estimates of the comptroller.[13]

[9] *Bowden v. Ricker*, 69 So. (Fla.) 694 (1915).

[10] *Rice v. Foshee*, 97 So. (Ala.) 764 (1923); *Bradbury v. Burschell*, 69 Atl. (Pa.) 1108 (1908).

[11] *Getzschmann v. Board of Commissioners of Douglas County*, 107 N.W. (Neb.) 987 (1906).

[12] *State v. Comrs. Hill Co.*, 185 Pac. (Mont.) 147 (1919); *People v. Supervisors Westchester Co.*, 133 N.Y.S. 760 (1912); *County Court of Mingo Co. v. Barling*, 125 S.E. (W. Va.) 253 (1924); *Coates v. Commissioners of Prowers Co.*, 221 Pac. (Colo.) 1090 (1924).

[13] *Bradbury v. Barschell*, 69 Atl. (Pa.) 1108 (1908); *McMillan v. Tucker*, 113 S.E. (Ga.) 391 (1922). In the latter case an injunction was denied to

In the matter of public buildings, as stated by the Supreme Court of Arkansas: "As a general rule, in all cases involving the location, repair, removal and furnishing of county buildings, such as court-houses, jails, and public offices, the court or county commissioners exercise a discretion which cannot be controlled by any judicial tribunal, in the absence of fraud, corruption, or unfair dealing." On this basis, the Supreme Court of Missouri, in a case where complaint was made of the crudeness and plainness of a proposed new court-house, held that the action of the county court in making estimates, within the limits prescribed in the statutes, was not reviewable by the courts in the absence of fraud. The Supreme Court of Georgia declined to review the action of county commissioners in locating the court-house on the east side of the lot and facing east, when it was urged that if placed in the center of the lot it would be farther removed from the noise of a railroad, and if faced north and south would avoid the heat and glare of the sun in the court room.[14]

In upholding the validity of a lease of certain county property the Supreme Court of Nebraska has held that in the absence of fraud or collusion, a contract made in good faith by a board of county commissioners on behalf of the county and within their powers may not be interfered with by the courts merely because they may be of the opinion that the county might have made a better bargain. "The board may have erred in judgment in looking at the matter, and may have made a bad bargain, but there is no fraud or collusion shown nor has there been a gross abuse of discretion established. The direction of county affairs is intrusted by law to the county board, and not to the courts."[15]

The Supreme Court of Louisiana has refused to review the acts of police juries in deciding on bank depositaries, and in laying

review the tax levy within the authorized limits, but issued as to that part of the levy above these limits.

[14] *Graham v. Nix.* 144 S.W. (Ark.) 214 (1912); *Decker v. Deimer*, 129 S.W. (Mo.) 936, 947 (1910); *Dunn v. Beck*, 86 S.E. (Ga.) 385 (1915); cf *Commissioners v. Porter Mfg. Co.*, 30 S.E. (Ga.) 547 (1898); *Anderson v. Newton*, 51 S.E. (Ga.) 508 (1905); *Dyer v. Martin*, 64 S.E. (Ga.) 475 (1909); *Dupuy v. Police Jury*, 39 So. (La.) 627 (1905); *Covington Co. Board v. Merrill*, 68 So. (Ala.) 971 (1915); *Murphy v. Police Jury*, 42 So. (La.) 979 (1906); *Miller v. Tucker*, 105 So. (Miss.) 774 (1925).

[15] *Lancaster County v. Lincoln Auditorium Association*, 127 N.W. (Neb.) 226 (1910). Cf. *Federal Contracting Co. v. Board of Supervisors*, 133 N.W. (Ia.) 765 (1911).

out, establishing, building, and maintaining roads within their respective parishes.[16] Such intermeddling would be an invasion by the judiciary of other departments of government in violation of constitutional prohibitions, according to the holding of the court. The Supreme Court of North Carolina has said that, where the constitution and the statutes of a state enjoin upon the commissioners of the several counties the duty of exercising a general supervision and control over roads and bridges, these powers, as distinguishable from a ministerial duty, "when exercised by the county commissioners under the general law, involve judgment and discretion, which, as a general rule, the courts will not attempt to control." [17]

According to the Texas Court of Civil Appeals, in denying an injunction to restrain the relocation of a road, the courts are not justified in interfering with the action of the county board just because they might reach a different conclusion, if the board acted within the scope of its authority. Since the people of the county select the county board to act for them, unless a gross abuse of such discretion is shown, the courts are "not in a position to disturb the honest discretion so exercised, for, to do so would be assuming to act as commissioners in lieu of the duly and qualified officers selected by the voters to represent them in that capacity." [18]

As further illustrations of the attitude of the courts in declining to review the acts of county authorities within their discretionary powers, it has been held that a mandamus will not lie to compel the appointment of a road supervisor under a permissive statute, the use of a memorial hall for a public speech, an increase of salary allowed but not required by statute, the establishment of fire limits authorized but not required, and the repair of a drain where the cost was considered more than the benefits.[19] Injunctions have been denied to restrain county commissioners in selecting newspapers for publishing delinquent tax lists, in exercising discretion as to putting into effect an act for the eradication of cattle-fever ticks and employing a guard to protect dipping vats, and from establishing toll gates on improved roads.[20]

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[16] *People's State Bank v. Police Jury of Red River Parish,* 154 La. 389 (1923), 97 So. 584; *Williams v. Police Jury of Concordia Parish,* 107 So. (La.) 126 (1926).

[17] *Day v. Commissioners of Yadkin County,* 133 S.E. (N. C.) 164 (1926); *Tripper v. Crouch,* 220 Pac. (Ore.) 1012 (1923).

[18] *Wright v. Allen,* 257 S.W. (Tex.) 980 (1923).

[19] *O'Connor v. Weissinger,* 134 S.W. (Ky.) 1127 (1911); *Lugenbuhl v. State,* 126 N.E. (Ohio) 71 (1919); *Comrs. Daviess Co. v. State,* 128 N.E. (Ind.) 596 (1920); *State v. Comrs. Chouteau Co.,* 202 Pac. (Mont.) 1108 (1921); *Griebel v. Supervisors Clinton Co.,* 202 N.W. (Iowa) 379 (1925).

It is thus a general rule that the courts will not interfere with the discretionary acts of county officers "except to reach and correct an arbitrary or capricious abuse of discretion." [21] This rule has been well summed up by the Supreme Court of Washington as follows: "The general rule, of course, is that the discretionary power of the board of county commissioners is not subject to review by the court. But this is not a universal rule. If the action of the board of county commissioners is arbitrary or capricious, or if its action is prompted by wrong motives, there is not only an abuse of discretion, but in contemplation of law there has been no exercise of the discretionary power. If an honest discretion, as demanded by the law, has not been exercised, the result is to substitute arbitrary action for such discretion. If a tribunal such as the board of county commissioners acts arbitrarily, or refuses to exercise its discretion, the law will by mandamus require it to exercise its discretionary power." [22]

Some cases of judicial interference to correct a gross abuse of discretion on the part of county boards may be noted. Thus where a board of county commissioners reduced the salary of a court commissioner from fifteen dollars per month to one dollar per month, the Supreme Court of Washington held that the board had made this reduction so as to force the resignation of the commissioner, that this was a "gross abuse of discretion," and that a writ of mandamus should be issued commanding them to vacate and rescind the order.[23]

The Supreme Court of Pennsylvania has held that "the discretion vested in the county controller is not an arbitrary, but a legal, one, and when he refuses to act it must be made to appear that the case was within his discretion, and that it was exercised in obedience to law. On this subject the courts are the final authority, and their jurisdiction cannot be ousted by simply asserting the matter was within the controller's discretion."[24]

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[20] *Getzschmann v. Comrs. Douglas Co.*, 107 N.W. (Neb.) 987 (1909); *Bowdoin v. Ricker*, 60 So. (Fla.) 694 (1915); *Dodd v. Comrs. Court St. Clair Co.*, 82 So. (Ala.) 521 (1919); *Rice v. Foshee*, 97 So. (Ala.) 764 (1923); *Ferguson v. Supervisors Roanoke Co.*, 113 S.E. (Va.) 860 (1922).

[21] *State v. Police Jury of Red River Parish*, 97 So. (La.) 584 (1923).

[22] *State v. Maschke*, 155 Pac. (Wash.) 1064 (1916). Also see *Inglin v. Hoppin*, 105 Pac. (Calif.) 582 (1909).

[23] *Ibid.*

Acts of county boards and other county authorities may be subject in some cases to judicial review by writ of certiorari, where they have exceeded the limits of their jurisdiction and have proceeded illegally, and no other method of review is provided. It has been issued in cases of illegal removals from office, and to review the action of a county board in designating an official newspaper.[25] But it has been held that it will not be issued to review proceedings of a ministerial, administrative, or legislative nature, as in rejecting the bill of a jail physician, fixing the boundary of a drainage district, the designation of a state highway, or the removal of an appointed county board of child welfare.[26]

The validity of elections and other questions as to the title to county offices may often be reviewed by *quo warranto* proceedings. But it has been held that this is not a proper remedy to determine the right to positions in the public service which are not public offices, as the custodian of a county court-house, a jail physician, or a county building commission.[27]

Judicial review of acts of sheriffs and other county authorities is also secured through the writ of habeas corpus. This is a high prerogative common-law writ having for its object the speedy release by judicial decree of persons who have been illegally restrained of their liberty or illegally detained from the custody of those entitled to have custody of them. It is used where the restraint or detention is by commitment under public authority, or by private parties. It is a mode of raising questions as to the lawfulness of an arrest, admission to bail, denial of speedy trial by failure to indict, defective or insufficient indictment, and restraint of an alleged fugitive pending extradition. It extends to questions affecting the jurisdiction of the court, the legal sufficiency of the proceedings, and the validity of the judgment or commitment under which the prisoner is restrained. In most states it may be used to test the validity of a statute or ordinance. But it is not a corrective remedy, and cannot be employed as a writ of *quo warranto* or a writ of certiorari, nor to perform the functions of a writ of error or appeal for the purpose of reviewing minor errors or irregularities in the proceedings of a court having jurisdiction over the person and subject-matter.

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[24] *Nicely v. Baker*, 95 Atl. (Pa.) 556 (1915).

[25] *State v. Comrs. Hughes Co.*, 46 N.W. (S. D.) 1127; *Wulzen v. Supervisors of San Francisco*, 35 Pac. (Cal.) 353; *Murphy v. Bd. of Freeholders of Hudson County*, 104 Atl. (N. J.) 304 (1918); *Howley v. Wyckoff*, 114 Atl. (N. J.) 536 (1921); *Lewis v. Commissioners of Brown Co.*, 182 N.W. (S. D.) 311 (1921).

[26] *In re Saline County*, 45 Mo. 52 (1869); *State v. Judge*, 42 La. Ann. 1089 (1890), 8 So. 277; *Sawyer v. Comrs. Androscoggin Co.*, 102 Atl. (Me.) 226 (1917); *State v. Dawson*, 225 S.W. (Mo.) 97 (1920); *Johnson v. Mathews*, 184 N.W. (Minn.) 214 (1921); *Jones v. Dutchess Co. Bd. of Child Welfare*, 202 N.Y.S. 235, 208 App. Div. 701 (1923); *Haddock v. Johnson*, 194 Pac. (Okl.) 1077 (1921).

[27] *Harris v. Corker*, 97 Atl. (N. J.) 893 (1916); *Sawyer v. Comrs. Androscoggin County*, 102 Atl. (Me.) 226 (1917); *State v. Sallow*, 143 N.E. (Ohio) 717 (1924).

Writs of habeas corpus are most frequently issued by judges of the higher state courts; but may also be issued by United States courts when agents of the United States government are held under state authority, and the jurisdiction of the United States courts in such cases has been extended from time to time.[28]

Removal of County Officers

Judicial control over county officers is also exercised by proceedings for the removal of such officers. State constitutions in many cases disqualify from holding office those convicted of felonies or infamous crimes, and in some states specific provision is made in regard to bribery, perjury, dueling, election offenses, malfeasance, malpractice, or corruption in office, and for misuse of or failure to account for public moneys. Conviction on such charges would operate to remove an official.

Many states have constitutional or statutory provisions expressly authorizing the removal of county and other officers by judicial proceedings. Constitutional provisions are found in a number of Southern states—in Alabama, Arkansas, Georgia, Louisiana, Texas, and West Virginia for county officers; in Tennessee and Mississippi, and also in Nebraska and Oregon, for public officers in general. There is a good deal of variety in the grounds for removal; but corruption, incompetence, and neglect of duty are among the more common. In Alabama intemperance is specified, and in Arkansas gross immorality.[29] In Louisiana the district attorney is authorized, and on written request of twenty-five resident citizens is required, to institute suit.

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[28] *Ruling Case Law*, 1176; *In re Neagle*, 135 U.S. 1 (1890).

[29] *Index Digest of State Constitutions*, pp. 228, 1161, 1178. The Kentucky constitution authorizes the removal of assessors for wilful errors; and the South Carolina constitution removal for the embezzlement of public funds.

Statutory provisions for removal of county officers by judicial proceedings are found in Massachusetts, Pennsylvania, Ohio, Kentucky, Tennessee, Nebraska, Oklahoma, and Nevada. In Ohio, clerks, sheriffs, coroners, constables, and other ministerial officers may be removed from office by court order for wilfully refusing or neglecting to perform any lawful duty in a criminal case or proceeding. County officers in Kentucky are subject to fine and removal for misfeasance or malfeasance in office, or wilful neglect in the discharge of official duties. County officers in Tennessee may be ousted for enumerated causes. On notice, it is the duty of the county attorney to investigate, and if he finds reasonable cause to institute proceedings.[30]

All county officers in Nebraska may be charged, tried, and removed from office for eight specified causes, including ''habitual or wilful neglect of duty'' and ''wilful maladministration in office.'' Any person may make such charge and the district court has exclusive original jurisdiction. The questions of fact are tried as in other actions, and if the accused is found guilty, judgment is entered by the court removing the officer.[31] County officers in Oklahoma may be removed for eight enumerated causes, including ''habitual or wilful neglect of duty'' and ''wilful maladministration.'' An accusation may be brought by the board of county commissioners or by the grand jury.[32] In Montana, an accusation against any county officer for ''wilful or corrupt misconduct or malfeasance in office'' may be presented by the grand jury of the county for which the officer accused is elected or appointed. The trial must be by a jury and conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.[33] In Nevada county officers may be removed for refusal or neglect to perform any official act in the manner provided by law, or for any malpractice or malfeasance in office.[34]

Special provision is made in some states for the removal of county officers who fail to enforce the prohibition laws. When any county attorney, sheriff, or other officer in Nebraska neglects, fails, or refuses to enforce the state prohibition law, any citizen of the county, the county attorney, the governor or the attorney general of the state may file complaint in any district court in the state, setting forth specific charges. If the defendant is convicted a decree is entered removing him from office.[35] In Indiana, Montana, and Utah, local law-enforcing officers, such as prosecuting attorneys and sheriffs, who fail or refuse to enforce the liquor laws are subject to removal by the circuit or district courts of their county.[36]

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[30] *Mass. Gen. Stat.* (1921) ch. 211, sec. 4; *Page's Ann. Ohio Gen. Code,* vol. 2, secs. 12850-51; *Carroll's Ky. Stat.,* 1922, sec. 3748; *Ann. Code of Tenn.* (County ed.), 1917, vol. 1, sec. 1135.

[31] *Comp. Stat. of Nebr.,* 1922, secs. 5028-5036. Also see *Hiatt v. Tomlinson,* 158 N.W. (Neb.) 383 (1916).

[32] *Comp. Okla. Stat.,* 1921, vol. 1, secs. 2394 ff.

[33] *Rev. Codes Mont.,* 1921, vol. 4, sec. 11687.

[34] *Rev. Laws Nev.,* 1912, vol. 1, secs. 2851-54.

Removal from office by judicial proceedings usually requires a clear case of neglect or refusal to perform an official duty definitely required by law. It has been held that they should not be used as a general inquisition. In some states such proceedings are held to be criminal or quasi-criminal in character; in other states they are considered as civil proceedings; and in some states as neither civil nor criminal.[37]

The power to appoint certain county officers has been vested in the courts in a few states.[38] County health officers and state's attorneys are appointed by the judges of the Superior Court in Connecticut, and prosecuting attorneys by judges in Virginia. The Superior Court in New Hampshire appoints annually two county auditors; one must be appointed from each of the two leading political parties. In Vermont the judges of the county court appoint an auditor who holds office for two years. While the power to appoint certain county officers has been vested in the courts in a few other states, it is very limited in scope.

Judicial control over county officers serves as a means of securing obedience to and preventing or penalizing violations of clearly defined legal duties. But the procedure of the courts is tedious and highly technical; for the most part judges can exercise their powers of control only in cases of flagrant abuse; and judicial control is thus largely ineffective as a means of securing competent and intelligent action. Moreover, judges lack the specialized knowledge of particular fields of public administration needed for the exercise of adequate supervision; and other agencies and methods seem to be needed.

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[35] *Comp. Stat. of Neb.*, 1922, sec. 3282. Also see *State v. Dyson*, 183 N.W. (Neb.) 298 (1921).

[36] *Laws of Utah*, 1917, ch. 2; *Laws of Mont.*, 1917, ch. 143; *Laws of Ind.*, 1917, ch. 4. Also see *American Year Book*, 1917, pp. 174-75.

[37] 46 *Corpus Juris*, ''Officers,'' sec. 178. But cf. Ch. XIII for removal of prosecuting attorneys in Massachusetts on charges of offensive behavior and as to moral fitness.

[38] *Gen. Stat. of Conn.*, 1918, sec. 2390; *ibid.*, sec. 5480; *Public Laws of N. H.*, 1926, Vol. 1, p. 163; *Gen. Laws of Vt.*, 1917, sec. 3896.

✓ ADMINISTRATIVE CONTROL

With the expansion of public activities both in amount and in new fields of action, the inadequacy of the earlier methods of constitutional, legislative, and judicial regulation of county and other local authorities has become more serious and more evident. To meet this situation various agencies and methods of executive and administrative supervision and control have been developed in the American states. The general aspects of this development will now be considered, while its more detailed application in particular fields will be discussed in later chapters.

Administrative supervision over local authorities has been employed in the countries of Continental Europe for a long time, and during the past hundred years there has been a notable development of such supervision in England. The later development in the United States has meant to some extent an application of the methods used in these countries, and a brief reference to these arrangements seems advisable.

Modern public administration first developed in France; and even under the monarchy before the Revolution there was a high degree of centralization, local officials being subject to the active oversight of royal agents. As reorganized and strengthened under Napoleon, the main features of this system remain in force, though modified through the introduction of representative institutions, and the later establishment of a democratic republic. Legislative and judicial control over local government in France is still of little importance. Administrative control is still in force, under a highly organized system of machinery, and exercised mainly by the ministry of the interior, but also to some extent by other ministries, acting through the prefects appointed by the central government in each of the geographical departments.

In other countries of Continental Europe the general line of development has been similar to that in France, though with important variations. In Italy, under the present régime, the system is more highly centralized, and there seems to be practically no local autonomy.

The development in England during the last century has been from a system of detailed legislative control towards a large measure of administrative control. The underlying basis remains that of parliamentary acts, with judicial proceedings as a means for their application. But the more important agencies of supervision are now the ministries of the central government. The ministry of health is the most important, but other ministries (such as the Home Office, the board of education and the board of trade) play a larger part than in France. Moreover, the scope of authority varies widely between the different ministries; and the arrangements are organized much less systematically than in France; while there are no outstanding local agents of the central government corresponding to the French prefects.

American developments towards administrative supervision started from a system of legislative centralization similar to that in England, and the agencies of control have been established, as in England, by a gradual process, with varying powers, with no outstanding department of control, and no chief local agents of the central state government. As yet the development of administrative supervision is much less than in England; and the detailed legislation leaves the administrative officers less room for the exercise of discretion.

Some forms of central administrative control in the United States are survivals from the colonial system of appointive county officers, as in the provisions for the removal of such officers by the governor. The development of newer agencies of supervision began in the field of education, where a state superintendent was established in New York in 1813. Similar officials were provided in other states from 1825, and by 1860 had been created in all of the Northern states and a few Southern states. State boards of charities began in Massachusetts in 1863, and had been organized in ten states by 1880. Massachusetts also established the first effective state board of health in 1869. In the field of public finance, state boards of equalization were provided early in the nineteenth century, but more active agencies of supervision of local officials began with the state examiner of public accounts in Wyoming in 1890 and the Indiana tax commission in 1891. New Jersey, in the latter year, established the first state highway commission. The present state constabulary may be said to begin with that of Pennsylvania in 1905.

State agencies of supervision have now been established in all the states for education, health, and highways. Forty states have state tax authorities; and thirty have central supervising agencies in the field of charities and correction. The degree of administrative control varies widely. It is probably greatest in the field of education. In general, it has been developed further in the states of the North and East than in those of the South and West; but there are important exceptions in some matters.

The principal methods of administrative supervision have been classified under the following captions: reports, inspections, advice, and grants in aid, as persuasive devices; and approval, review, orders, ordinances, removal, appointment, and substitute administration, as an ascending order of more effective methods.[39] In later chapters the widely varying application of these methods in different fields of administration will be discussed. A brief general account of the scope of the various methods authorized will be given here. This, however, will not indicate the extent to which they are actually exercised. To determine the latter would require a more detailed examination of the organization and equipment of the state agencies, the quality of their personnel, and the efficiency of their work.

Reports, Inspection, and Advice

A basis for any system of supervision is the collection of information as to local conditions. This may be secured by reports from local officials, by inspections, and by more detailed investigations. The requirement of reports is most general, and is found in most fields of county administration. Forty states require reports on the assessment of property for taxation; thirty call for further data on taxation; and several states require more complete reports on local finances. In all the states reports on school affairs are required, and information on this is more general than in any other field of local activity. In practically every state, reports of vital statistics and information as to local health conditions are required. About a third of the states require reports on county jails and almshouses. In several states reports from local road officials may be required by the state authorities; in Massachusetts the state highway authority is required to compile statistics relating to public ways, and in Missouri county-road engineers are required to make yearly reports to the state highway engineer. In some states local prosecuting attorneys make reports to the attorney general.

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[39] Schuyler Wallace, *State Administrative Supervision over Cities*, ch. 2; J. A. Fairlie, "New York State Administration," 15 *Pol. Sci. Qy.* 48 (1900).

Inspections and investigations are also provided for in most states, but there is much variation in their operation. They are authorized as to local assessments in three-fourths of the states. As many states make some provision for state examination of local accounts; but in many of these this is made only on special order, or on petition, or applies only to some branches of public administration. Three-fourths of the states have state educational inspectors or supervisors. In general, state health authorities, through their agents, may inspect and investigate local sanitary conditions. In half a dozen important states full time, trained district health inspectors have been provided, making possible more active and systematic supervision over the local authorities. Thirty states provide for state inspection of local jails and almshouses. State inspection of state-aid roads is provided in a number of states.

Advice and assistance by state authorities to local officials are generally authorized, and are likely to be asked for and given in any case. This may be given by printed circulars and by correspondence on specific matters, and also in connection with official inspections. The extent and value of such advice will depend on the staff and equipment of the state authority. A special form is the holding of conferences or brief schools of instruction, which have been provided in many states for school teachers, and in some states for local tax assessors, health officers, and road officials. State conferences on social work often bring together state and local officials with private organizations and individuals. In some cases more definite services are given, as by the laboratories of state health departments.

A law passed at the 1927 session of the North Carolina legislature provides an interesting, and advanced type of advisory supervision over county government.[40] A county government advisory commission, composed of five members, appointed by the governor, has been established to advise county commissioners on the best methods of administering county business; to recommend to the various authorities a simple and efficient method of accounting; to suggest changes in the organization of county government; and to make recommendations to the governor. The commission is authorized to appoint a competent person as executive secretary. It is his duty to visit the county commissioners and other county officers, and to advise and assist them in providing proper administrative methods. He is to suggest methods for levying and collecting taxes and for keeping accounts, and to prepare proper forms for use by county officers in making reports and keeping accounts. It should be noted that the powers of this county government commission are advisory in nature; there are no mandatory powers of direction or control, and no authority to assume functions formerly performed by the county.

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[40] *N. C. Session Laws*, 1927. Also see Paul W. Wager, ''North Carolina to Have Better County Government,'' 16 *Nat. Mun. Rev.* 519 (1927); *Report of County Government Advisory Commission* (1928).

Control of Local Action

The requirement of approval of local actions by a state authority is a more definite but largely negative form of control. About half the states require the approval of local health ordinances by the state department. A third require state approval of plans for the construction of jails or almshouses, and in some states for both. About a dozen require state approval of plans for school buildings. A third of the states require the approval of local bond issues by a state authority, but in most cases this is only to ensure compliance with the specific requirements of the law. A few states now require state approval of county and other local budgets.

Review and revision of local decisions may arise out of the power of approval, if the state authority requires changes as a condition of approval. But a more specific power of review is often granted, which may have a broader scope. Such a power was early granted in some states in provisions for the equalization of property valuations for taxes, so as to adjust the burden of the state tax. Three-fourths of the states now provide for equalization, as between local districts; and about thirty of these states give the state agency the further power to review individual local assessments or to require a reassessment of a particular district. A few states grant discretionary power to revise proposed bond issues and local budgets. Several provide for a regular audit of county and other local accounts. In about a third of the states, controversies arising under the school laws may be adjudicated by the state educational authority. The Wisconsin highway commission is authorized to review and alter the routes proposed by county officials for prospective state roads.

The power to issue specific orders seems a necessary complement to the power of review; but orders may also be authorized, without a formal review, to enforce statutory requirements or compliance with general rules and regulations. Such power may often be implied, but is more definitely granted in some matters. In about half of the states, the state health authority may issue orders to remedy certain unsanitary conditions in particular cases. Half a dozen states authorize a state officer to require local tax levies to meet payments on local bond issues. A few states authorize specific orders to improve conditions in jails and almshouses.

Authority to promulgate regulations of a more general nature is granted in many states. The power to prescribe forms for reports usually goes with the requirement of such reports; and this involves the keeping of records for the purpose. A far-reaching application of this power is the authority given in twenty states to instal systems of local accounts, though in some this is done only on the request of the local authorities. In California and Montana the form of county budgets may be prescribed by state authority.

Ordinance power of a broader scope to issue regulations on health matters is granted to the health departments of all but one state. In thirty states, the state education department has authority to prescribe the course of study for the schools; and specific requirements have been made as to certain subjects, such as civics, physiology, agriculture, home economics, normal and industrial training, and special classes for defectives. About the same number of states authorize the state authority to prepare a list of approved text-books or to prescribe text-books. About half of the states authorize the state department to issue regulations on school matters. The Wisconsin highway commission is authorized to make regulations relating to state highways and the county system of prospective state highways.

Grants in Aid

State grants of money to local authorities for particular purposes are not in themselves a method of supervision, but are in most cases a means of securing more effective supervision by making the grants dependent on certain conditions. Grants may be made mainly as a means of adjusting the burdens of local taxation, without reference to particular objects; and such grants merely enable the local authorities to accomplish something more than they otherwise could do. But in this country there has been little use of blanket grants;

and state aid is given for some general purpose, and usually with varying degrees of specific requirements.

Money grants are of most importance in the fields of education and road building. In all the states some part of the cost of maintaining the general system of public schools is paid by the state. The proportion of state aid varies from 1½ per cent in Kansas to 81½ per cent in Delaware. In New Jersey, Alabama, Kentucky, and Texas more than 40 per cent of school revenue comes from the state. The sources of the state revenue and the methods of distribution vary widely.

Grants in aid of the construction of important roads are made in a number of states, including Pennsylvania, Illinois, Michigan, Wisconsin, Connecticut, Delaware, Maryland, North Carolina, Florida, Arkansas, and California. This is usually limited to not more than 50 per cent of the total cost, and is often combined with federal grants. Where such grants are made there is a more positive control over the plans and character of the work. Massachusetts, Alabama, and some other states take over the direct charge of state aided roads, requiring the local authorities to contribute a certain part of the expense.

Small grants are made in a few states for public health work, and for special charities, as needy children and the support of nonresidents.

State Administration

Direct state administration of particular functions goes beyond supervision to complete control. But provisions for direct state action in special cases may be the culmination of a system of supervision, and provision for its use may be an important means of stimulating local action. The more permanent substitution of state administration for local action in some matters is part of the general centralizing movement.

In the field of law enforcement there has, from early days, been provision for direct state control of a local situation in serious emergencies by the use of the militia; and under some circumstances the national government may enter the field. More recently about a dozen states have established small bodies of state police, mainly for use in rural districts. In a few cities, a police commissioner or commission is appointed by the governor or legislature.

State health departments may supersede the local authorities in some forty states, if local conditions are considered to warrant in cases of epidemics or serious neglect by the local officials.

Direct state administration has been established in forty states for the assessment for taxation of railroads and some other special classes of property. In the fields of education, charities, and correction, there has been a large development of state institutions for important branches of work. And a considerable number of states have undertaken the construction of a general system of main roads at state expense.

Control over Personnel

Local selection and removal of county and other local officers has been the accepted practice in the United States. This has been true even of those officers who act chiefly as agents of the state in carrying out state laws and aid in administering the affairs of the state. But there have been exceptions to this practice; and there has been some tendency to increase the scope of state control over local personnel. The power of removal of local officers is the earlier and more common method of control over personnel, but there has been some development of powers of selection and some control over local selection.

Removal by State Authority.—Removal of local officers seems a drastic power of control. Yet this power is not infrequently authorized when there is no definite system of supervision and no other method of control. It is, however, in many cases authorized, and is likely to be used, only on serious charges of dishonesty, incompetence, or neglect of duty. It is therefore largely negative in its results and not adapted in itself to develop efficiency and the best quality of service.

A number of states have provided for the removal of county and other local officials by the governor or other state officers. In a few cases the power of removal is given in somewhat general terms; but more often it is restricted to certain classes of officers. It is most common in the case of law enforcement officers, but is sometimes applicable to financial, health, school, and other officials.

In a few states there are constitutional provisions.[41] In Pennsylvania, elected officers (except the governor, lieutenant governor, members of the legislature and judges of courts of record learned in the law) may be removed by the governor for reasonable cause, on an address of two-thirds of the Senate. In Delaware, the governor may remove officers convicted of misbehavior in office or of infamous crime; and, on address of two-thirds of the members elected to each house of the legislature, may remove any officer (except the lieutenant governor or a member of the legislature) for reasonable cause. In South Carolina, executive or judicial officers may be removed by the governor for wilful neglect of duty or other reasonable cause, not sufficient ground for impeachment, on address of two-thirds of each house of the legislature. In Mississippi, the legislature may authorize the governor to remove county officers under regulations prescribed by law; and other states authorize the legislature to provide for removals.

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[41] *Index Digest of State Constitutions*, pp. 228, 229, 1177, 1178.

The New York and Wisconsin constitutions provide that the governor may remove sheriffs, county clerks, district attorneys, and registers, after giving the officer to be removed a copy of the charges against him and a hearing. By statute, the governor of New York is given a similar power to remove some other county officers.[42]

Michigan provides by statute that the governor may, after a hearing, remove any elective county officer, when he is satisfied that the officer is incompetent to execute properly the duties of the office. An officer so removed is not eligible to election or appointment to the same office for a period of three years.[43] In Minnesota, by statute, the governor may suspend or remove a county officer or custodian of public funds when it has been made to appear to him by competent evidence, and after a hearing, that such an official is guilty of misfeasance in the performance of his public duties. North Dakota has a similar statute, adding habitual drunkenness or gross incompetency as grounds of removal.[44] Other states where the governor has a more limited power of removing county officers are Illinois, Kentucky, Ohio, Mississippi, Kansas, and Colorado.

The power conferred on the executive to remove an officer for cause is held by the courts to imply the power to judge of the existence of the cause, the limit of judicial interference in such cases being to protect public officers in their right to a hearing on specific charges. It has been held that the courts will presume he had a proper cause for removal; but this presumption may be overcome by countervailing evidence.[45]

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[42] *Const. of New York,* Art. X, sec. 1; *Const. of Wis.,* Art. VI, sec. 4; *N. Y. Public Officers Law,* sec. 33.

[43] *Comp. Laws of Mich.,* 1922, ch. 22.

[44] *Minn. Gen. Stat.,* 1927, sec. 6954; *Comp. Laws of N. D.,* 1913, vol. 1, secs. 685-695.

In some states, the governor may initiate proceedings to secure the removal of county officers by judicial proceedings. In Nebraska, he may direct the attorney general or a special attorney to institute and prosecute quo warranto proceedings against certain county and municipal officials; while these proceedings are pending, the governor may suspend the officer and make a temporary appointment.[46] In Tennessee, the governor has the power, and it is his duty, whenever he has knowledge that reasonable grounds exist for ouster proceedings under the laws of the state against any county officer, to direct the county attorney to institute and prosecute the same against the offending officer.[47]

In Oklahoma, it is the duty of the attorney general when directed by the governor, or upon notice in writing, verified by five or more reputable citizens of the county, that any county officer is guilty of official misconduct within the meaning of the statutes of that state, to investigate such complaint. If he finds reasonable grounds for the complaint, he must institute proceedings in the district court of the county to remove the officer. In case the attorney general has reason to believe that the gambling or liquor laws of the state are being violated, he may institute ouster proceedings on his own initiative.[48]

In Wyoming, the governor may direct the county and prosecuting attorney of the county or the attorney general of the state to prosecute an action in the district court of the county in which a county officer serves, asking for his removal. Pending the trial of such case by the district court, the officer may be suspended by the governor.[49]

Power to remove some county and other local officials is not infrequently conferred on other state officials than the governor.[50] Fourteen states authorize the state superintendent of public instruction to remove local school officials for neglect of duty; and more than thirty states provide for the revocation of teachers' licenses. In nearly half of the states the state board of health may remove any local health officer who fails to perform the duties of his office satisfactorily; and in ten other states the courts have interpreted some of the "blanket clauses" so as to imply a grant of this power. In half a dozen states, local assessors and in some cases other finance officers may be removed by state officials; and in Iowa, county road engineers may be removed by the state highway authority for incompetency.

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[45] 46 *Corpus Juris,* "Officers," sec. 174. See Chapter XIII for illustrations of the removal of sheriffs.

[46] *Laws of Neb.,* 1923, ch. 116.

[47] *Ann. Code of Tenn.* (County ed.), vol. 1, sec. 1135a7.

[48] *Comp. Okla. Stat.,* 1921, vol. 1, secs. 2414, 2422.

[49] *Wyo. Comp. Stat.,* 1920, secs. 1398-99.

[50] Schuyler Wallace, *State Administrative Supervision over Cities,* pp. 89, 96, 116, 174.

Control over Selection.—In a number of states the selection of certain county and other local officers is vested in state authorities. This power of appointment is most often given to the governor, usually subject to confirmation by the senate or executive council; but in a few cases it is exercised by the legislature, and more frequently by special state authorities dealing with the functions of the officers appointed. State appointments are for the most part found in New England and other states of the Atlantic seaboard.

Such appointments are authorized for a considerable variety of officials in different fields of administration, including judges, prosecuting attorneys, coroners, justices of the peace, and health and school officers. But even in the states which provide for state appointments there seems to be no uniform principle as to the class of officers to be so appointed or by whom such appointments are made.

Judges of trial courts are appointed by the governor in four states—Massachusetts, New Jersey, Mississippi, and Florida. But these are not considered as county officers. In two of these states, New Jersey and Florida, prosecuting attorneys are also appointed by the governor. In Maine, Maryland, and New York City coroners are appointed by the governor, as are also medical examiners, who largely take the place of coroners, in Massachusetts and New Hampshire. In several New England states, justices of the peace are appointed by the governor.

Other county authorities appointed by the governor include county boards of education in Maryland, county school commissioners and superintendents of schools in Delaware, county boards of elections in New Jersey, Maryland, and Louisiana, county agents for juvenile cases in Michigan, county treasurers, auditors, and local assessors in South Carolina, county welfare boards in Florida, and county boards on mother's pensions in Pennsylvania. In Delaware, the governor appoints local assessors to fill vacancies, and in Louisiana to vacancies in the parish boards of equalization.

Selection by the state legislature is used for judges of trial courts in four states (Connecticut, Vermont, Virginia and South Carolina); for sheriffs in Rhode Island; and for county boards of education in North Carolina. In two of the states (Connecticut and Virginia) where judges are appointed by the legislature, coroners are appointed by the judges; and in one (Connecticut), county health officers are also appointed by the judges. County welfare boards are appointed by judges in Indiana, Virginia, and Arizona.

State boards of education appoint county boards of education in South Carolina, and school superintendents or supervisors in New Jersey, Nevada, Vermont, and Virginia.

County boards of health or health officers are appointed by the state health authorities in seven states (Alabama, Kentucky, Mississippi, Virginia, Vermont, South Dakota, and Wyoming). In a number of other states the state department is authorized to fill such positions if local appointments are not made; and in half of the states local registrars of vital statistics may be appointed by the state health authorities. In half a dozen states district health officers are appointed by the state department.

In a few states local assessing officers are appointed by state agencies. In Maryland, the state tax commission appoints a supervisor of taxes for each county from a list proposed by the county commissioners. In West Virginia, all local boards of review are appointed by the state board of public works. In Louisiana, one member of each parish board of equalization is appointed by the state tax commission. County boards of welfare are appointed by the state boards of charities in Minnesota and Arkansas. The state highway commission of New Mexico appoints for each county of the state a county road board which has general control over the roads and bridges within the county. County election officers are appointed by state election authorities in Ohio and half a dozen Southern states.

In addition to the direct state appointment of county officials, there are also significant cases of state supervision over the local selection of county officers and other local functionaries. The most widespread and important illustration of this is the state control over the selection of teachers by the requirement of definite qualifications, tested by examination and certification. State certificates based on examinations by the state authorities are issued in some states; in others, while the examinations are conducted by county officers, uniform examination questions are prepared by the state department, and the papers are graded by state examiners.

State control is also exercised in a few states over the selection of county health and road officials. In New Mexico and Pennsylvania, the appointment of county health officers is subject to the approval of the state department of health. In New Jersey, no person can be appointed a local health officer unless he holds a license granted by the state board of health to those who qualify by examinations conducted by the state board.

County road engineers in Michigan, Kansas, and West Virginia are appointed by the county board, subject to the approval of the state highway department. In Illinois, county superintendents of highways are selected on the nomination of candidates by the county board, who are required to take examinations held by the state department of public works, and appointments by the county board must be from the list of eligibles.

These examples of state selection and state control over the local selection of county officials indicate a distinct departure from the general practice of the uncontrolled local selection of such officials. Further developments in these directions may be anticipated, and should result in the choice of more competent officials. Direct state appointment to any large extent will involve a radical change from traditional methods, though it would seem to be justified in the case of some officials whose functions are most clearly those of agents of the state government. But there should be less objection to an extension, to officials whose duties call for special qualifications, of definite requirements as to such qualifications, and of state examinations for testing them or of state approval of local appointments. Such methods may well be applied further, not only in the fields of education and of health and highway administration, but also in the selection of prosecuting attorneys, sheriffs, assessors, auditors, and others.

PART III

ORGANIZATION OF COUNTY GOVERNMENT

CHAPTER VII

COUNTY BOARDS

COUNTY GOVERNMENT IN GENERAL

In the organization of county government no definite plan or principles have been followed. Neither the separation of legislative, executive and judicial powers, nor an executive responsible to a representative body has been applied with any approach to consistency. In nearly every state there is an elective county board which levies taxes and determines matters of local administrative policy; but it has very limited powers of legislation. There is also in every state a number of other officials, mostly elective, with executive, administrative, and judicial functions. These are largely independent of the county board or of any unified control; and there is no single officer who can be considered as the chief officer of the county, corresponding to the governor of a state or the mayor of a city. Judicial and administrative functions are often combined in the same officer.

In a report of a joint legislative committee on county government in Ohio in 1926, it was stated: "In administrative organization county government presents a picture of extraordinary complexity . . . the county violates almost every principle of business and governmental organization which experience has evolved. . . . The present system of county government is subject to serious criticism both from the standpoint of administrative efficiency and of popular control. As a business organization the county lacks a responsible head. . . If democratic government . . . signifies effective popular control, the present organization of the county with its multiplicity of elective offices is fundamentally undemocratic."[1]

A report on County Government in Virginia in 1927 stated: "In our study of Virginia county government we were particularly impressed by the scattered, disjointed and irresponsible type of organization that exists in all the counties. . . The present county government has no responsible head; it is without a chief admin-

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[1] *Report of the Joint Legislative Committee on Economy and Taxation* (1926), pp. 243-45.

ve officer and the board of supervisors controls through ap-
nent only a small part of the county administration."[2]

bstantially the same statements could be made of county government as it exists throughout the United States.

An account of the present machinery of county government may begin with an examination of county boards, followed by a study of other officials, grouped so far as practicable according to their functions.

THE COUNTY BOARD

With a considerable variety of structure and name, there exists in every state except Rhode Island, a local authority in each county, which levies taxes, performs certain administrative functions and has some limited powers of supervision over other county officers. These local authorities are given various names, as boards of supervisors, boards of county commissioners, county courts, boards of revenue, fiscal courts, boards of chosen freeholders, and police juries.

The county board has sometimes been called the legislative branch of the county government; and it is the only one in the list of county organs to which the term could be applied to any degree. But an examination of the authority of the county boards shows that they exercise legislative power only to a very limited extent, while they have in addition administrative, and in some cases also judicial, functions. It has been held by the courts in most cases that county boards are "the administrative officers of the county."[3] According to the Supreme Court of Colorado, "the general scope of their duties being the administration of the affairs of the county, they must be administrative officers, and though vested with a large amount of discretion, which this court has many times said cannot be controlled by the courts, yet it is administrative discretion, rather than judicial. They do not make law, but are themselves wholly subject to the Constitution and statutes, and are concerned only in the administration of the business of the county as therein directed."[4] The Supreme Court of California took a better view when it pointed out that the duties of the county board "are various and manifold; sometimes judicial, and at others, legislative and executive." Since they exercise such varying types of

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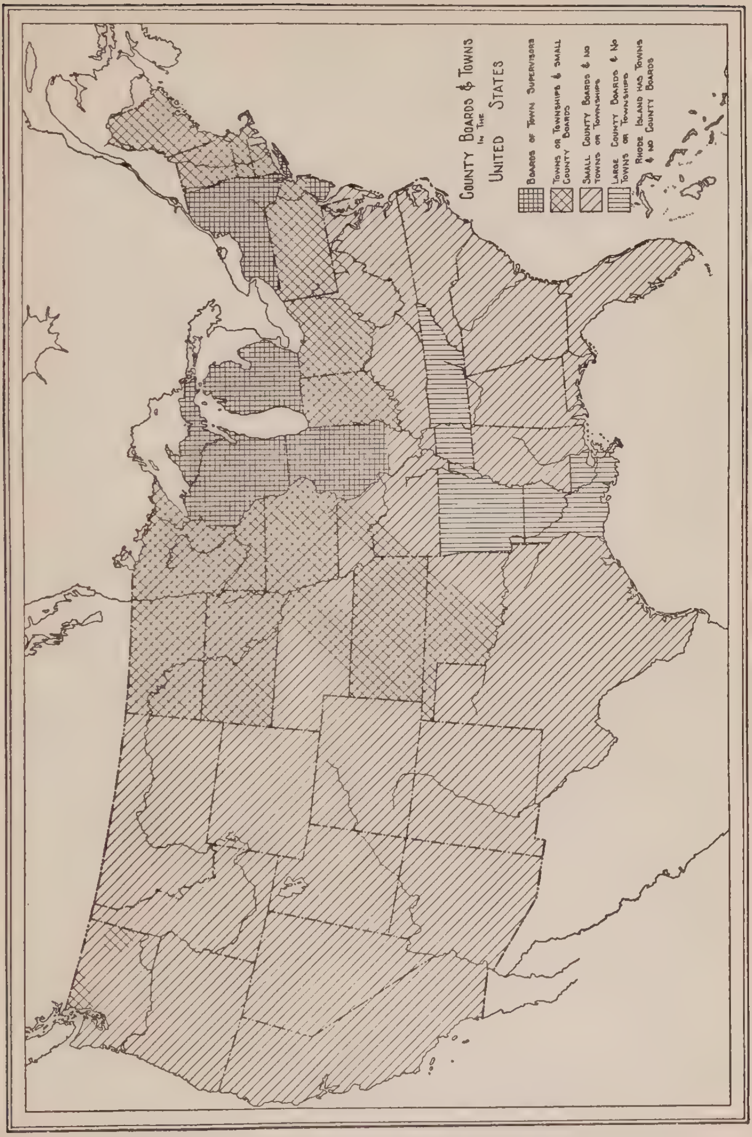
[2] *Report on County Government in Virginia* (1928), pp. 5-6.

[3] *Pacific Timber Cruising Company v. Clarke County*, 233 Fed. (Wash.) 540 (1916); *Appeal of Hewitt*, 58 Atl. (Conn.) 231 (1904).

[4] *Sheeley v. People*, 129 Pac. (Colo.) 201 (1913).


County Boards & Towns in the United States
Boards of Town Supervisors
Towns or Townships & small County Boards
Small County Boards & no Towns or Townships
Large County Boards & no Towns or Townships
Rhode Island has Towns & no County Boards

duties, "from the necessity of the case, it would be impossible to reconcile them under any particular law."[5]

It is the general view of the courts that members of a county board are county rather than state officers. According to the Supreme Court of Iowa, since the members of the county board act "solely for and in behalf of the county, there is no escape from the conclusion that they are county officers."[6] The Supreme Court of South Dakota has also held "that county commissioners are county officers in the ordinary and legal sense of the term, is too plain to require extended argument."[7] It has been held by the Supreme Court of Florida, however, that a county commissioner might be prosecuted for malpractice as provided in the statutes for an "officer of this state." "A county commissioner is an officer of the state, though not perhaps a state officer, in the sense of one paid by the state and having jurisdiction coextensive with the state. The county is a mere political subdivision of the state government, and the county commissioners are creatures of that government deriving their powers only from the state."[8]

It has been customary to speak of two types of county boards —the small board of commissioners elected at large for each county, and the much larger board of supervisors elected by townships and cities within each county. But in some states the organization of the county board is the result of a compromise between these two typical forms; while in other states it contains features foreign to both. In Illinois, Nebraska, and New Jersey, both the large and small types of county board are found.[9] Moreover, the use of the terms has been interchanged, so that small boards are sometimes known as boards of supervisors; and, especially in some of the Southern states, other names are still in use, such as the county court, the levy court, or the fiscal court. It is therefore necessary to examine in some detail the various forms of organization in the different states.

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[5] *People v. Supervisors of El Dorado County,* 8 Calif. 58 (1857).

[6] *In re Assessment of Farmers' Loan and Trust Company,* 136 N.W. (Ia.) 543 (1912).

[7] *State v. Rexford,* 109 N.W. (S. D.) 216 (1906).

[8] *Jackson v. State,* 71 So. (Fla.) 332 (1916).

[9] Twenty-seven out of the ninety-three counties in Nebraska are operating under the township form of county government. The governing boards of counties having the township form of government consist of seven members elected from supervisor districts or supervisors elected from each township. The voters of the county have the option of adopting either plan; but only one county has adopted the latter plan. In commission governed counties the county board is composed of three commissioners in counties of less than 125,000 people; counties of above this population may by popular vote increase the number from three to five. *Nebraska Blue Book,* 1926, pp. 277-78. In Illinois eighty-five counties have boards of supervisors, sixteen have small boards of commissioners and in Cook County there is a board of commissioners of fifteen members.

In the five New England states which have county boards, they usually consist of three members, who are elected at large in each county, except in Connecticut, where they are chosen by the state legislature.[10] In four of these states the board is known as the board of county commissioners; but in Vermont the duties of commissioners are performed by assistant judges of the county court.[11] In New Hampshire [12] and Connecticut [13] the commissioners do not exercise the power of taxation or of making appropriations. These are entrusted to biennial conventions of the members of the state legislature from each county. This arrangement reduces the importance of the county board, but avoids placing in the same body the authority to levy taxes, to make appropriations and to disburse the proceeds. In Massachusetts, county appropriations and tax levies are made by the legislature; [14] but the estimates of the county commissioners are regularly adopted; and there have been some cases of extravagance if not of corruption.[15]

In the Middle Atlantic and North Central states two distinct groups can be recognized in the organization of county boards. In New York, Michigan, Wisconsin, and most of the Illinois counties, they are composed of representatives from the townships and cities, known as boards of supervisors. Such boards of supervisors range in distinctly rural counties from fifteen to twenty-five members. But in counties containing a large city the number is larger, and in some cases is as high as fifty or more, and in a few cases, counties with only four or five organized townships have a correspondingly small county board.[16]

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[10] *Gen. Stat. of Conn.*, Rev. of 1918, vol. 1, sec. 186.

[11] *Gen. Laws of Vt.*, 1917, sec. 3825-3836.

[12] *Public Stat. and Sess. Laws N. H.*, in force 1901, p. 123.

[13] *Gen. Stat. of Conn.*, Rev. of 1918, vol. 1, secs. 197, 199.

[14] *Gen. Laws of Mass.*, 1921, vol. 1, ch. 35, secs. 29-30.

[15] G. Bradford, *The Lesson of Popular Government*, II, 80.

[16] In Michigan boards of supervisors have from twenty-four to a hundred members, the largest number in Wayne county which includes the city of Detroit. In Illinois, boards of supervisors have from four to fifty-three members. In most New York counties they have from twenty to fifty members.

New Jersey counties have boards of chosen freeholders, formerly chosen in all counties by towns, boroughs, and cities; but since 1902 these have been replaced in 15 of the 21 counties by boards of three to ten members elected at large.[17]

The large boards of supervisors are formed on the basis of representing local districts, and population is considered only to a minor degree. Each township has at least one representative, irrespective of population. Cities and larger townships are given some additional representation; but this is not in proportion to their population, and in many cases a city with the larger part of the population of the county will be in a minority in its representation on the county board. In some cases, however, one city does have a majority on the county board. Detroit, Michigan, has more than a majority of the board of supervisors for Wayne county; and Chicago, by a special arrangement, elects ten of the fifteen county commissioners of Cook county, Illinois.

In these large county boards local representation is more fully secured than in the small boards; and there seems some reason to believe that the representatives elected feel a greater degree of popular responsibility. This form of organization therefore seems to be the better, in so far as the boards act as legislative and taxing authorities; but they are also executive and administrative authorities; and for these purposes the large board is unwieldy, especially in counties where the number of members runs up to forty or fifty. Judge T. M. Cooley criticized the working of the large boards in Michigan; and there has been a good deal of dissatisfaction with the large boards of supervisors in New York,[18] Illinois,[19] and Wisconsin.[20]

To obviate such difficulties and criticisms there have been in some cases modifications in the organization of these large county boards. Probably the most frequent change is the development of a system of committees to which the detailed work of the board is referred, while the board acts mainly as a ratifying authority.[21] But this tends to weaken the chain of responsibility, while it fails to make a distinct separation between the spending and appropriating authorities. Another change introduced in some states has been the establishment of county auditors, to relieve the supervisors of the duty of examining claims. This partially separates two incompatible functions; but in Wayne county, Michigan, where the system has been in existence longest, the powers of the auditors have been gradually increased, until they are practically the county board, and the supervisors merely register their wishes.

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[17] The two largest counties (Hudson and Essex) have boards of nine and ten members. The six counties which retain the older system have from 14 members in Salem county to 32 each in Atlantic and Camden counties. *Comp. Stat. N. J.*, 1910, vol. 1, pp. 470-532; *Cum. Supp. N. J.*, 1911-1924, 48-101 pp.

[18] For criticisms of the large county board see: H. S. Gilbertson, "The New York County System," 8 *Amer. Pol. Sci. Rev.* 413-430 (1914); *Report of the Special Joint Committee on Taxation and Retrenchment in New York*, 1926, pp. 38-39; Alfred E. Smith, "New York County Government Archaic," 15 *Nat. Mun. Rev.* 399 (1926).

[19] *Ill. Const. Conv. Bull.*, No. 12 (1920), p. 1020.

[20] By act of 1921 Wisconsin counties may now reorganize their county boards and provide a board of three to nine members, depending upon the population of the county. *Wis. Stat.*, 1923, vol. 1, ch. 59.93.

Another method has been introduced in Cook county, Illinois. An act of 1893 created for that county the office of county president, elected as a member of the county board, who is given a limited veto over the acts of the board and the power to appoint the county officers not elected by popular vote.[22] Through these powers, analogous to those given to the national, state, and city executives, the county president is made the responsible head of the county administration (so far as that is not under independent elective officers), and the county board becomes the representative organ for voting supplies and determining the general policy of the county.

In New Jersey counties of the first class there is a chief executive officer. The law provides for the election of a county supervisor and a board of chosen freeholders. The county supervisor, who is elected for a two year period is "the chief executive officer of the county, and may recommend the board of chosen freeholders to pass such measures as he may deem necessary or expedient for the welfare of the county." It is his duty to communicate to the board of chosen freeholders at their first annual meeting and at such other times as he may deem expedient, a general statement relative to the government finances, institutions and improvements of the county, with such recommendations as he may deem proper; and he must be vigilant and active in causing the laws and ordinances of the county to be executed and enforced. It is his duty to exercise a constant supervision over the conduct of all subordinate officers and to examine into all complaints made against any of them for violation or neglect of duty, and if he finds any officer guilty of charges brought against him, the county supervisor may suspend or remove him as the case may seem to require. The county supervisor has a veto, which may be overridden by a two-thirds vote. His salary is fixed by the board of chosen freeholders but must be not less than five thousand dollars.[23]

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[21] See *Wis. Stat.*, 1923, vol. 1, ch. 59.06.

[22] *Cahill Ill. Rev. Stat.*, 1923, ch. 34, pp. 994-1009. Also see S. E. Sparling, "Responsible County Government," 16 *Pol. Sci. Quart.* 437 (1901).

There was formerly in Kings county, New York, a supervisor at large, who presided over the board and exercised some executive functions.[24] County executives were also provided in the home rule charters which were recently voted upon and defeated in Nassau and Westchester counties in New York.[25]

In the other states of this geographical group from Pennsylvania west to Kansas and the Dakotas, the county board is a small body of three to seven members.[26] In Pennsylvania, Maryland, Ohio, and South Dakota, the members are elected at large in each county. In Indiana, Iowa, Minnesota, North Dakota, Nebraska, and Kansas, they are elected by districts into which the counties are divided, a compromise with the system of town representation used in the states previously noted.

The small county boards in some states meet more frequently than the larger boards of town supervisors, and are thus more active administrative bodies. At the same time they are the taxing and appropriating authority for the county, with no clear distinction between their executive and legislative functions. But it may be noted that some of the states in this group have county auditors, who relieve the county board of the detailed examination of claims and act as a check to keep expenditures within the appropriations.

Some years ago Indiana made important changes in its county system, so as to separate the power of making appropriations from the spending authority. There was ample evidence of carelessness and extravagance, if not of dishonesty, in the conduct of county business under the former system; and this led to the new law of 1899.[27] This law established in each county a county council of

[23] *Cum. Supp. to Comp. Stat. of N. J.*, 1911-1924, vol. 1, pp. 724-25.

[24] F. J. Goodnow, *Administrative Law of the United States* (1905), p. 192 n.

[25] John Fleischer, ''Nassau County Plans a New Government,'' 8 *Nat. Mun. Rev.* 348 (1919); Richard S. Childs, ''Westchester County Plans a New Government,'' 14 *Nat. Mun. Rev.* 349 (1925).

[26] In Delaware from seven to ten members elected by districts.

[27] *Burns Ind. Stat.*, 1926, vol. 2, secs. 5862-6108. Cf. H. S. Gilbertson, *The County* (1917), p. 37.

seven members, four to be elected by districts and three at large. To this council were given the fiscal powers of the old county board, notably the exclusive right to vote all appropriations for county expenses on a carefully prepared budget, to borrow money and issue bonds, or to purchase and sell real estate. The former county board remains as the executive authority for carrying out the policy determined by the appropriations. It may be noted that these county councils occupy a somewhat similar position to the county conventions in Connecticut and New Hampshire.

In the Southern states there is no longer a uniform organization for county boards. In Kentucky,[28] Tennessee, [29] and Arkansas [30] the quarterly court of justices of the peace still constitutes the fiscal and general administrative authority of the county. But with the popular election of the justices by county districts this system has become one of local representation somewhat similar to the boards of town supervisors in the Northern states; and in two of these states the number of justices on the county boards approximates to the number of supervisors in such states as Michigan and Illinois. In Kentucky the number of districts for electing justices ranges from three to eight; and under the constitution of 1891 the voters of any county may adopt a commission plan of three commissioners elected at large sitting with the county judge. Eight counties have adopted the commission plan.[31]

Virginia has adopted some of the terminology of the Northern system. Each county is divided into from three to ten magisterial districts, and each district, besides other local officers, elects a supervisor to the county board.[32] In Louisiana the parish authority corresponding to the county board is known as the police jury, which is elected by wards, and is thus also a body organized on the principle of local representation.[33]

[28] Carroll's *Ky. Stat.*, 1922, ch. 52.

[29] *Ann. Code of Tenn.*, 1918, vol. 5, secs. 5992-6054a5.

[30] *Digest of Stat. of Ark.*, 1921, sec. 2279. The number of members in Arkansas ranges from ten to seventy-five.

[31] Carroll's *Ky. Stat.*, 1922, ch. 52. Also see *Report of the Efficiency Commission of Kentucky*, vol. 1, pp. 553, 572.

[32] See: Mary Elizabeth Pidgeon, ''The Power and Practice of Virginia County Boards,'' 14 *Nat. Mun. Rev.* 240 (1925).

[33] See: William O. Scroggs, ''Parish Government in Louisiana,'' 47 *Annals of Amer. Acad. of Pol. and Soc. Sci.* 39-48 (1913). In 1914 Louisiana authorized the adoption of a commissioner system of county government with three commissioners elected at large for terms of four years. *Const. and Stat. of La.*, 1920, vol. 2, p. 1523.

the other Southern states the county board is a small body e to five members. In West Virginia and Missouri[34] it is known as the county court. In Mississippi (where it consists of five members elected by districts) it is called the board of supervisors. Elsewhere the board is composed of county commissioners, sometimes elected at large (Alabama), sometimes by districts (Florida and Texas), and in most of the counties in South Carolina appointed by the governor on the recommendation of the local members of the legislature.[35] In Oklahoma there has been established an excise board which levies all local taxes. This is in most counties an ex officio body; but in some of the larger counties is separately elected.[36]

Two special characteristics in some of the Southern states should be noted; one is the continued combination of judicial and administrative functions in the same hands. This is true, not only in Kentucky, Tennessee, and Arkansas, but also in Alabama, where the probate judge is chairman of the county board,[37] and in Georgia, where the probate judge or ordinary himself in some counties performs most of the duties of the county board, limited in some matters by the grand jury.[38] The second notable feature is the tendency towards a definite chief county officer. This reaches its maximum in the case of the ordinary in Georgia, and the county judge in Arkansas, who is probate judge and also the executive chairman of the county court. To a smaller degree the county or probate judge in Alabama, Tennessee and Texas is the leading member of the county court.[39]

In the Mountain and Pacific states of the West the county board is always a small body. In most cases it has three members, called county commissioners; in some states they are elected at large and in others by districts. In Oregon there are two commissioners, who with the county judge, constitute the county court and transact the county business.[40] In California, counties other than those having home rule charters have county boards of five members.[41]

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[34] See: Eugene Fair, "The Missouri County Board—Its Personnel and Procedure," 14 *Nat. Mun. Rev.* 680 (1925).

[35] *Code of Laws of S. C.*, 1922, vol. 3, secs. 1058-1061.

[36] Maurice H. Merrill, "County Government in Oklahoma," 4 *Oklahoma Municipalities* (1920).

[37] In Alabama it has been held that the legislature may by special act abolish the court of county commissioners composed of the judge of probate and four county commissioners and establish a board of revenue composed of seven members elected from the county. *Code of Ala.*, 1923, vol. 3, sec. 6748-6772; *Jarman v. Bennett*, 93 So. (Ala.) 650 (1922); *Covington County v. Merrill*, 68 So. (Ala.) 971 (1915); *State v. Brackin*, 45 So. (Ala.) 841 (1908).

[38] *Ga. Code*, 1926, secs. 4796-4799; 6520-6522. Boards of county commissioners have been established in most counties by special legislation.

[39] In Kentucky the practice seems to vary in different counties. See *Report of the Efficiency Commission of Kentucky* (1924), vol. 1, part VI.

The organization and functions of the county board present special problems in metropolitan urban counties. The question of city county consolidation is of such importance that it will be discussed in a separate chapter.[42]

Meetings of county boards vary in frequency and length. The large boards meet less often. In New York state, boards of supervisors meet infrequently, and they act to a large extent through committees.[43] In Illinois the law requires two meetings of the boards of supervisors each year, and four quarterly meetings of the small boards of commissioners; but in practice meetings are more frequent. Boards of supervisors usually hold four quarterly meetings, in April, June, September and December, and a fifth meeting in March, to complete business before newly elected members are chosen. These meetings often continue for two or three days. Boards of commissioners in this state in some counties hold monthly meetings. Special meetings may also be held at other times.[44]

Illinois boards of supervisors, like those in New York state, appoint committees which handle business between sessions of the board. In the larger counties there are from twelve to twenty committees and sometimes more.

Members of the county board in most states are paid on a per diem basis. The amount is generally fixed by statute, and ranges from four or five to eight dollars per day, with an allowance for mileage.[45] There is often a limit on the number of days the members of the county board may be paid for during the year, or a limit on the total amount of salary they may draw. In some states and some counties in other states a salary is paid,[46] the amount usually being small. A fairly large salary is paid in some of the larger counties of a few states. Thus in Wisconsin counties of above 250,000 population the chairman of the county board receives $2,700 per year and the other members $2,400. In Indiana counties of above 150,000 population the members of county boards receive $2,800; and in Nebraska they receive $2,500 per year in counties above 100,000 in population.[47]

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[40] *Ore. Laws,* 1920, vol. 1, sec. 934.

[41] *Pol. Code of Calif.,* 1923, sec. 4027.

[42] See Chapter XXIV.

[43] *Report of the Special Joint Committee on Taxation and Retrenchment,* 1926, p. 38.

[44] J. A. Fairlie, *Town and County Government in Illinois* (1912), pp. 82-84; *Ill. Const. Conv. Bull.* (1920), No. 12, p. 1020. In 1911-12, the small board of county commissioners in Morgan county held twelve meetings, aggregating 110 days. In Will county the board of supervisors had twenty-six committees in 1919-20.

[45] M. S. Kendrick, *A Comparison of the Cost of County Boards* (1929); *Code of Ia.,* 1927, secs. 5125-27; *Wis. Stat.,* 1927, vol. 1, ch. 59.03; *Cahill Ill. Rev. Stat.,* 1927, ch. 53, secs. 51-52; *Barnes' W. Va. Code,* 1923, p. 647; *Va. Code,* 1924, sec. 2769; *Comp. Stat. Neb.,* 1922, sec. 2389.

The total expenditure for meetings of county boards is distinctly larger in counties with larger boards than in those with small boards.[48]

It is difficult to make any general statement as to the character of members of county boards. Conditions in the three thousand counties throughout the country undoubtedly vary to a great degree; while even in the same county the type of men who are elected at different times will vary. In counties containing large cities there has frequently been much dissatisfaction with the county boards and sometimes serious charges have been made against them. And in some communities movements for political reform are directed as much at the county boards as at municipal authorities.

In rural counties such complaints are not frequent; but this may be due in part to a less active spirit of investigation. Some years ago, within a few months, serious complaints and charges were noticed from such counties in New York, Pennsylvania, Michigan, and California.[49] The chief justice of a Southern state reported that county commissioners there were "incorruptible, but as a rule weak. The voters regard almost anybody as competent for such a place, and, therefore, vote from personal predilection, rather than from a motive to subserve the public good." This statement would probably apply to conditions in most parts of the United States today.[50]

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[46] County boards in Ohio, Indiana, Colorado and Utah are on a salary basis.

[47] *Wis. Stat.*, 1927, vol. 1, ch. 59.03; *Burns Ind. Stat.*, 1926, vol. 2, secs. 6104-6108; *Comp. Stat. Neb.*, 1922, sec. 2389.

[48] M. S. Kendrick, *A Comparison of the Cost of County Boards* (1929).

[49] *Sacramento Record-Union*, Sept. 24, 1905; *Utica Herald-Dispatch*, Sept. 28; *Philadelphia Public Ledger*, Oct. 28; *Detroit Free Press*, Jan., 1906.

[50] On the organization and operation of county boards see: I. L. Pollock, "Investigations of County Administration in Iowa," 13 *Nat. Mun. Rev.* 299 (1924); A. B. Butts, "The County Board in Mississippi," 13 *Nat. Mun. Rev.*

COUNTY MANAGER

The extension of the manager plan of government to the county has been advocated by some as a partial solution of the proper organization of the county.[51] It is held that greater centralization of authority and responsibility is needed than is provided by the county board; and it is urged that appointment of the county executive is to be preferred to the method of election. Counties in states having county home rule have power to provide for county managers; county manager charters have been proposed and defeated in San Diego and Sacramento counties, California,[52] in Baltimore county, Maryland,[53] and in Silver Bow county, Montana.[54]

Some years ago several counties in North Carolina appointed county managers, and in other counties the chairman of the county boards were placed on a full-time salary basis to act as county managers.[55] Since then Georgia and North Carolina have provided

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554 (1924); R. M. Goodrich, ''The County Board in Minnesota,'' 13 *Nat. Mun. Rev.* 684 (1924); Harry A. Barth, ''Politics in Southwest County, Pennsylvania,'' 13 *Nat. Mun. Rev.* 360 (1924); A. C. McIntosh, ''County Government in North Carolina,'' 14 *Nat. Mun. Rev.* 96 (1925); Mary Elizabeth Pidgeon, ''The Power and Practice of Virginia County Boards,'' 14 *Nat Mun. Rev.* 240 (1925); Eugene Fair, ''The Missouri County Board—Its Personnel and Procedure,'' 14 *Nat. Mun. Rev.* 680 (1925); Harry A. Barth, ''County Government in the Southwest,'' 14 *Nat. Mun Rev.* 140 (1925); A. E. Nelson, ''Unprofitable County Government,'' 13 *Nat. Mun. Rev.* 625 (1924); A. E. Smith, ''New York County Government Archaic,'' 15 *Nat. Mun. Rev.* 399 (1926); William Anderson and Bryce E. Lehman, *County Government in Minnesota* (1928), pp. 30-34.

[51] Richard S. Childs, ''The County Manager Plan,'' *N. Y. State Const. Conv. Comm., County Government in New York*, 1915, pp. 68-71; Alfred E. Smith, ''County Government Archaic,'' 15 *Nat. Mun. Rev.* 399 (1926); Rowland A. Egger, ''The Manager Plan Appropriate for Counties,'' 18 *Nat. Mun. Rev.* 237-241 (1929). Cf. Kirk H. Porter, ''A Wet Blanket on the County Manager Plan,'' 18 *Nat. Mun. Rev.* 5-8 (1929); W. Kilpatrick, *County Management* (1929).

[52] Irwin Engler, ''County Manager Charter Defeated in Sacramento,'' 11 *Nat. Mun. Rev.* 309 (1922); Charles Hoopes, ''Politicians Win Again in San Diego County,'' 12 *Nat. Mun. Rev.* 345 (1923).

[53] H. W. Dodds, ''A County Manager Charter in Maryland,'' 9 *Nat. Mun. Rev.* 504 (1920). Also see 10 *Nat. Mun. Rev.* 2 (1921).

[54] A. R. Hatton, ''The Butte-Silver Bow Consolidated Charter,'' 12 *Nat. Mun. Rev.* 310 (1923). Also see 12 *Nat. Mun. Rev.* 386 (1923).

[55] *Proceedings of the Fourth National Country Life Conference*, 1921, p. 81: county managers in Catawba and Caldwell counties (1917); commission chair-

by statute for the adoption of the county manager plan of government.

Georgia, by act of 1922, provided for the adoption in any county by popular vote of the county manager plan. The act provides for a commission of five members, known as the board of county commissioners of roads and revenues, and a county manager, selected by and serving at the pleasure of the board. The county manager has charge of all of the business matters of the county and has supervision of the work of the county in the building and repair of roads, bridges, buildings, or of any other work of the county, under the general supervision of the county board. His appointing power is subject to the advice and consent of the county board. He is the chief purchasing and selling agent of the county; but all purchases and sales by him are subject to the ratification of the board.[56]

North Carolina by act of 1927 also provides for the adoption of the county manager form of government. The board of county commissioners is empowered to appoint a county manager to be administrative head of the county government and responsible for the administration of all the departments of the county government which the board of county commissioners has authority to control. In lieu of the appointment of a county manager, the board may confer upon the chairman of the board of county commissioners, or upon any other officer or agent of the county who is sufficiently qualified to perform the duties, the powers and duties of a manager. The term manager applies in any case, and the compensation may be revised in order that adequate compensation may be received. If the board fails to appoint a county manager, the voters may by petition require the submission to the electorate of the question of the adoption of the manager plan of government. In case the manager plan is adopted, the manager, who becomes administrative head of the county, enforces the orders and regulations of the board; attends meetings of the board and recommends measures; makes reports to the board and keeps it advised upon the affairs of the county; appoints, with the consent of the county

men in Rockingham, Richmond, Buncombe, and Mecklenburg counties, 1917-19). Several counties in Virginia have taken some steps towards a county manager. In two counties financial administration has been largely concentrated in the county clerk (Augusta county) or auditor (Pittsylvania county). In Arlington county a directing engineer has been appointed. Wylie Kirkpatrick, *County Managemnt.*

[56] *Ga. Code,* 1926, sec. 615 (1)–(25); *Ga. Laws,* 1927, No. 301.

commissioners, subordinate officers and agents; and performs such other duties as may be required of him by the board.[57]

In 1930, four counties in North Carolina have county managers. In two of these, the chairman of the county board is manager, in one another member of the board has this position, and in one the manager is not a member of the board.[58]

The use of a small board or commission and an appointed manager would seem to be advantageous for the better administration of the affairs of the county. It would not only centralize control and responsibility but it would provide executive leadership.[59] It would be possible to secure a higher type of executive by appointment than by popular election; the appointive manager would be a distinct improvement over the elective county executive found in a few states.

For the greater number of counties with relatively small population the manager could take over the functions of one or more of the existing offices, such as county auditor or county clerk, and it would not be necessary to make any addition to the list of county officers. Some improvement could be made by concentrating more fully in one of the present offices the responsibility for the business management of county affairs.

POWERS OF THE COUNTY BOARD

County boards are creatures of limited jurisdiction[60] and can exercise only such powers as are "expressly conferred by the Legislature, and such as are necessarily implied in the full exercise of those powers expressly given."[61] Since the county board is a creature of the state constitution and statutes,[62] the doctrine that they can exercise only such powers as are expressly, or by necessary implication, conferred upon them by statute has been referred to as elementary.[63] The principle of limited powers of the county board has been stated by the Supreme Court of Missouri as follows:

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[57] *Public Laws of N. C.*, 1927, ch. 91. Also see: Paul W. Wager, "North Carolina to Have Better County Government," 16 *Nat Mun. Rev.* 519 (1927).

[58] Paul W. Wager, "Improving County Government in North Carolina," 18 *Nat. Mun. Rev.* 8-15 (1929); "The Case for the County Manager," 12 *Public Management*, 78-82 (1930).

[59] On the need of such responsibility and executive leadership see: S. E. Sparling, *op. cit.*, 16 *Pol. Sci. Quart.* 437 (1901).

[60] *Hamilton v. McMahel*, 141 N.E. (Ind.) 469 (1923).

[61] *Barbor v. County Court of Mercer County*, 101 S.E. (W. Va.) 721 (1920).

[62] *Wallace v. Commissioners' Court of Madison County*, 281 S.W. (Texas) 593 (1926).

> "County courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. They have only such authority as is expressly granted to them by statute. . . . This is qualified by the rule that the express grant of power carries with it such implied powers as are necessary to carry out or make effectual the purposes of the authority expressly granted."[64]

The authority of county boards is, therefore, determined by the constitution and statutes of the state; and even the provisions of general application are so numerous and so scattered throughout the volumes of collected laws as to make impracticable a comprehensive analysis of their varying powers in the different states. Special legislation for particular counties in many states increases the difficulty in making general statements.

More specifically, county boards manage county finances and property, having varying powers in regard to highways and other public works, and the care of the poor; they usually have some supervision over county officers, and sometimes over townships and other subdivisions of the county; and in some states they have a limited ordinance and police power. A brief survey of their activity in each of these fields may be given.

Control of county finances constitutes the most important function of county boards. In four states (Connecticut, New Hampshire, Indiana, and Arkansas) this power is given to bodies separate from those exercising the administrative powers. When the county commissioners in Connecticut deem it necessary to levy a tax, they must call a meeting of the senators and representatives from that county who may impose the tax. Likewise, it is the senators and representatives from the county who make appropriations for items of county expenditures, or for alterations and repairs of the jails and county court-house.[65] The power to raise county taxes in New Hampshire is vested in the county convention, which consists of the representatives of the towns of the county.[66] In Indiana this function is performed by the county council, which consists of four members elected by districts and three members elected at large.[67] In Arkansas the county judge with a majority of the justices of the peace constitute a levying court, making appropriations and levying taxes for the expenses of the county.[68] As has been pointed out above, county appropriations and tax levies in Massachusetts are made by the legislature; and in Rhode Island there is no local administrative authority in the county corresponding to the county board in other states.

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[63] *Carbon County v. Hamilton*, 160 Pac. (Utah) 765 (1916).

[64] *King v. Maries County*, 249 S.W. (Mo.) 418 (1923). Also see: *Henry v. Grainger County*, 290 S.W. (Tenn.) 2 (1926); *Tallahatchie Drainage District v. Yocona-Tallahatchie Drainage District*, 114 So. (Miss.) 264 (1927); *Wadsworth v. Board of Supervisors of Livingston County*, 112 N.E. (N. Y.) 161 (1916); *Roper v. Hall*, 280 S.W. (Texas) 289 (1926); *Rexford v. Board of Commissioners of Rush County*, 151 N.E. (Ind.) 830 (1926); *Board of Commissioners of Gunnison County v. Davis*, 150 Pac. (Colo.) 324 (1915); *Bone v. Bowen*, 185 Pac. (Ariz.) 133 (1919); *Crick v. Rash*, 229 S.W. (Ky.) 63 (1921); *Murphy v. Swanson*, 198 N.W. (N. D.) 116 (1924).

In other states the two functions are combined in the same boards, which levy taxes for county purposes. The extent of this taxing power is, however, limited to authorized purposes and is usually further restricted by a maximum rate. Additional revenue is received from licenses and fees, and sometimes from other sources. County boards in many states can raise money by issuing bonds, usually after popular ratification of a proposed loan, and special authority to make loans for particular purposes is given from time to time by the state legislatures.[69]

In some states the county boards have power to equalize the aggregate assessment of property for taxation in the townships or other subdivisions of the county, and in some cases to review individual assessments. The county boards do not have this power in the New England states, nor in most of the Southern states, where assessments are made by a county officer. In Ohio, Indiana, Illinois (most counties), and Oregon, this power of equalization and review is given to a special board distinct from the general county authority.[70]

Power to levy taxes ordinarily includes power to appropriate the revenue to particular purposes. In the case of county boards this authority is usually restricted by statutory provisions fixing the compensation of certain county officers and requiring other payments. But outside of these the county boards can make appropriations within the limits of their taxing powers.

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[65] *Gen. Stat. of Conn., Rev. of 1918,* vol. 1, secs. 197, 199.

[66] *Public Stat. and Sess. Laws of N. H.,* in force 1901, p. 123.

[67] *Burns Ind. Stat.,* 1926, vol. 2, secs. 5862-5911.

[68] *Digest of Stat. of Ark.,* 1921, sec. 1977.

[69] On county finances see Chapters XVIII and XIX.

[70] *Burns Ind. Stat.,* 1926, vol. 3, sec. 14204; *Ore. Laws,* 1920, vol. 2, sec. 4292; *Cahill Ill. Rev. Stat.,* 1927, ch. 120, sec. 341.

County boards are also the final authority for the allowance of claims and accounts and the disbursement of county funds, and in most cases every payment must be specifically authorized by the board. But the detailed examination of bills is usually performed by the county auditor or county clerk.[71]

The United States census reports on local finances[72] show the relative importance of county expenditure in the various states, and indicate that by this standard the importance of county administration in the different geographical groups of states does not agree with the traditional accounts of local government. In the states of the Central group county expenditure is larger than in the Southern states; while in three of the New England states (Maine, New Hampshire, and Massachusetts), county finances are of some importance. But the highest per capita county expenditure is in the most westerly states.

Over roads and bridges the authority of county boards varies in different states. In most states they have at least power to locate the more important county roads; usually they build bridges; and in some states they have direct supervision over the construction of certain roads.[73] Judging by expenditures, county roads are of most importance in California, Oregon, Washington, Nevada, and Colorado. In New England county roads are of some importance only in Massachusetts and Maine. In a few states county boards have authority to undertake other public works as well as the construction of highways: levees or dykes in Louisiana and Nebraska;[74] drains in Arkansas and North Dakota;[75] and irrigation works in South Dakota.[76] In some states (e.g., Michigan and Wisconsin) they may establish county parks; and in Pennsylvania they may provide playgrounds, swimming pools, or other recreation centers. In Pennsylvania, Michigan, Wyoming, and California, counties may acquire and maintain aviation landing fields.[77]

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[71] See Chapter IX.

[72] United States Census Bureau, *Wealth, Debt and Taxation,* 1913, vol. 2, p. 210.

[73] See Chapter XVII on highway administration.

[74] *Const. and Stat. of La.,* 1920, vol. 3, p. 1829; *Comp. Stat. Neb.,* 1922, sec. 1025.

[75] *Digest of Stat. of Ark.,* 1921, secs. 3569 ff.; *Comp. Laws of N. D.,* 1913, vol. 1, secs. 2461 ff.

[76] *S. D. Rev. Code,* 1919, vol. 2, secs. 8290 ff.

County boards regularly erect and maintain court-houses and jails, and other public buildings, and in some states they may erect armories, and also suitable memorials in memory of the men who lost their lives in the World War. County boards in many states may now establish county libraries.[78]

Outside of New England, poor relief is an important object of county expenditure, although there is sometimes also town or city payments for the same purpose. In most states county almshouses have been erected, where formerly all classes of paupers were maintained; but with the development of state institutions for special classes, such as the insane, county administration is of less relative importance. County boards in many states now have authority to establish hospitals. More generally they have power to appoint county physicians. Counties with a large urban population, such as Cook county, Illinois, have a number of specialized charitable institutions.

In one of the New England states (New Hampshire), almshouses are county institutions, and in Massachusetts and Connecticut there is some county expenditure for poor relief. But local charities are primarily a function of town and city government in the New England states, and also to some extent in New Jersey, Pennsylvania, and some states of the Middle West.

Outside of New England, county boards usually have some limited police power. A power conferred upon them in several states is that of licensing and regulating dance halls, amusement parks, carnivals, bathing beaches, and other like places of amusement. In the Southern and far Western states they frequently license and regulate inns, auctioneers, peddlers and other kinds of business. County boards in Wisconsin may now by ordinance regulate and restrict the location of trades and industries outside the limits of incorporated cities and villages. Similar cases of the exercise of a limited police power may be found in other states.

In several states the constitutions authorize the legislatures to confer local legislative powers on the county board. Thus the legislature of New York is authorized to confer upon boards of supervisors such powers of "local legislation and administration" as it may deem expedient.[79] In Michigan the legislature may by general law confer upon the boards of supervisors "such powers of a local legislative and administrative character, not inconsistent with the provisions of this constitution, as it may deem proper."[80] The legislatures of Virginia and Wisconsin are also authorized to confer such powers upon county boards.[81] But the custom of detailed statutory legislation seems to be too firmly established to allow of any important delegation of power.

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[77] *Public Acts Mich.*, 1927, p. 372; *Sess. Laws Wyo.*, 1927, p. 74; *Stat. and Amendments to Codes of Calif.*, 1927, ch. 267; *Pa. Stat. Supp.*, 1928, secs. 460a1 ff.

[78] For consideration of the question of county functions see Chapter XII.

Three states go further than merely to authorize a grant of local legislative powers to the county. In California, Idaho, and Washington the state constitutions confer express power on counties to make and enforce within their limits such local, police, sanitary and other regulations as are not in conflict with the general laws of the state.[82] But the state legislatures may by detailed statutory legislation relative to local government greatly reduce and limit the legislative powers of county boards.

While county boards are considered the general county authority, the number of officers whom they appoint are few. In most cases they appoint the superintendent of the poor, and sometimes the superintendent of the workhouse. They now appoint road officers in some states; and in Michigan they appoint drain commissioners. In several states they have the more important power of appointing county treasurers.

Over elective officers the county boards have some means of supervision. In many states they must approve bonds of these officers and examine their accounts. In some states, as Wisconsin and Iowa,[83] they have power to fix salaries. Occasionally their power goes further. Thus the board of county commissioners in Utah has power to supervise the official conduct of all county officers and officers of all precincts, districts, and other subdivisions of the county (except municipal corporations); see that they faithfully perform their duties; direct prosecutions for delinquencies; and to require them to make reports and to present their books and accounts for inspection.[84] County boards in Wisconsin may, at any annual meeting, abolish, create or reëstablish any office or position (with certain exceptions), created by statute and the salary or compensation for which is paid in whole or in part by the county, and the jurisdiction and duties of which lie wholly within the county.[85] But in the main they have only such powers of supervision as are conferred by statute;[86] and there is no effective control over the elective county officers.

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[79] *Const. of N. Y.*, Art. III, sec. 27.

[80] *Const. of Mich.*, Art. VIII, sec. 8.

[81] *Const. of Va.*, Art. IV, sec. 65; *Const. of Wis.*, Art. IV, sec. 22.

[82] *Const. of Calif.*, Art. XI, sec. 11; *Const. of Wash.*, Art. XI, sec. 11; *Const. of Idaho*, Art. XII, sec. 2.

[83] *Wis. Stat.*, 1923, vol. 1, ch. 59.08; *Code of Ia.*, 1927, sec. 5130.

Except in the New England states, county boards usually have power to organize townships or establish county precincts for various purposes. In Massachusetts and Michigan they form districts within the county for the election of members of the legislature.[87] But they seldom have any effective control over township officers. In Illinois county boards now levy town road taxes, on the certificate of the town highway commissioner.[88]

In most states, outside of New England, county boards have duties in regard to elections. They establish polling places and appoint election officers; and in some states they act as county boards of canvassers, to declare the results of elections.

Other powers are conferred on these boards with great diversity. For example in a great number of states they act as jury commissioners; in several states they have sanitary powers; in Massachusetts they may establish truant schools; and in Wisconsin they can incorporate literary and benevolent societies.

A question which has arisen in connection with the county boards in some of the Northern states is whether they have the power to compel witnesses to testify before them. Under the former English and early American system where the quarterly court of justices of the peace served as the county authority, this power might be implied, and in the states where this system continues or where the county board is still called a court it may be accepted without question. But in other states very different answers have been given. In New Jersey a board of freeholders has no authority to summon a witness or to examine him.[89] In Michigan, a board of supervisors may subpoena a witness, but may not punish for contempt if he refuses to testify.[90] In New York the boards of supervisors are authorized by statute to summon witnesses; and on refusal to answer pertinent questions any judge may commit the defaulting witness to jail. And in Massachusetts, by statute, county commissioners may administer oaths, and impose petty punishments for disturbing their meetings.

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[84] *Comp. Laws of Utah,* 1917, sec. 1400x3. Also see *Carbon County v. Hamilton,* 160 Pac. (Utah) 765 (1916).

[85] *Laws of Wis.,* 1923, ch. 190.

[86] *State v. Davis,* 45 So. (La.) 838 (1908); *Williams v. State,* 123 S.W. (Ark.) 780 (1909).

[87] *Const. of Mass.,* Art. 53; *Comp. Laws of Mich.,* 1915, vol. 1, sec. 2276.

[88] *Cahill Ill. Rev. Stat.,* 1927, ch. 121, sec. 62.

[89] *Brown v. Morris C. and B. Co.,* 27 N. J. Law 648 (1858).

Another question which arises in connection with the county board is that of the judicial review of its acts. While this subject has been discussed in a former chapter, some reference to the attitude of the courts may also be made here. The general principle of judicial review has been well stated by the Supreme Court of Georgia when it said that "the manner of doing an act within the power of governing officials of a county must be largely left to their discretion. That discretion must be, from the nature of the case, a broad one, and the reviewing power of the judge of a superior court must be exercised with caution, and no interference had unless it is clear and manifest that the county authorities are abusing the discretion vested in them by law."[91] This principle has been generally followed by the courts of other states in reviewing the acts of county boards.

The members of a county board are not liable for damages which result from the exercise of judicial or quasi-judicial functions. It is the general holding of the courts that since county boards are engaged "in a public work in virtue of their office, the rule of non-liability applies to them, as well as to the body for which they are acting." It is thus the rule that "the agents who perform the governmental functions are no more responsible than the artificial body—the corporation for which they acted."[92] As stated by the Supreme Court of Mississippi, "It is not a ministerial office, but one in which judgment and discretion are to be used in reference to its duties, and no liability attaches for a mistake made in good faith in performing such duties, which may result in injuries to private persons."[93] The Supreme Court of Missouri, in following this principle of non-liability for members of the county court in

[90] *In re Blue*, 46 Mich. 268 (1881).

[91] *Dunn v. Beck*, 86 S.E. (Ga.) 385 (1915). Also see: *Day v. Commissioners of Yadkin County*, 133 S.E. (N. C.) 164 (1926). See Chapter VI for a further consideration of this question.

[92] *Snethen v. Harrison County*, 152 N.W. (Ia.) 12 (1915). Also see *Gannon v. Hohusen*, 132 Pac. (Ariz.) 566 (1913).

[93] *McNulty v. Vickery*, 88 So. (Miss.) 718 (1921).

that state when acting in a quasi judicial capacity, has said: "It must be obvious that, were the law otherwise, it would be impossible to get suitable persons to perform the many and important duties assigned, under our system, to county courts. He would be a bold man who would put his personal fortune to the hazard of mistakes in deciding the nice and complicated questions put up to that body." [94]

The rule is different, however, where the act of the county board is ministerial in nature. In such a case they are liable for their acts of misfeasance or nonfeasance which result in injury.[95] The Supreme Court of the United States, in considering the question of liability of members of the county board when performing a ministerial act, has stated the rule as follows: "The rule is well settled, that where the law requires absolutely a ministerial act to be done by a public officer, and he neglects or refuses to do such act, he may be compelled to respond in damages to the extent of the injury arising from his conduct. There is an unbroken current of authorities to this effect. A mistake as to his duty and honest intentions will not excuse the offender." [96]

It is thus the generally accepted rule that in case of a ministerial act it is no defense to the action that the parties "may have been mistaken as to the law, and may have acted without any corrupt design." Liability in such cases "does not depend upon a criminal intent, but rests upon lack of jurisdiction, or want of express authority in law." [97]

A final question to be considered is that of the liability of the county for the acts of the county board. It is a general principle that counties are not liable for the wrongful acts or omissions of their officers, agents, servants or employees unless made so by statute or by some constitutional provision. Counties are created by the state for governmental purposes and their duties are imposed upon them by law "and in the performance of their duties they act for and on behalf of the state. They are therefore civil or political agencies or instrumentalities of state government."[98] Since the state cannot be sued without its consent, the courts hold that in the absence of some constitutional or statutory provision imposing liability, an action will not lie against a county for a tort arising from the negligent act or omission of the county board.[99]

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[94] *State v. Diemer,* 164 S.W. (Mo.) 517 (1914).

[95] *Nix v. Citizens' Bank of Moultrie,* 132 S.E. (Ga.) 249 (1926).

[96] *Amy v. Supervisors,* 11 Wall. (U. S.) 136 (1870).

[97] *County Court of Tyler County v. Duty,* 87 S.E. (W. Va.) 256 (1915). In one of the Southern states the members of a county board for a series of years frequently served their terms in jail for refusal to obey a mandamus to levy a tax to meet payments on a bond issue. F. Wickizer, "A County Thirty-one Years in Rebellion," 73 *Century* 928 (1907).

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[98] *Gearin v. Marion County*, 223 Pac. (Ore.) 929 (1924). Also see: *Hilgers v. Woodbury County*, 206 N.W. (Ia.) 660 (1925).

[99] Cf. Chapter VI.

CHAPTER VIII

COUNTY OFFICERS FOR THE ADMINISTRATION OF JUSTICE

THE county is an important area for the administration of justice and the enforcement of state law. While in most states the courts of general jurisdiction are organized and function in districts covering more than one county, such courts are held in each county; and in about a third of the states there are local courts and judges for each county. Other county officers chiefly engaged in the administration of justice are the sheriff, prosecuting attorney and coroner. This chapter will deal with the selection, powers, and duties of these officers; and in a later chapter will be considered some of the problems of judicial administration.

COUNTY COURTS

In most states courts of general jurisdiction are not organized on a county basis. Thus the general trial court is known as the circuit court in fifteen states; as the district court in fifteen states; and as the superior court in five other states.[1] While the judges of these general trial courts are usually elected, they are appointed in a few states. Thus in New Jersey, Florida, and Mississippi they are appointed by the governor with the confirmation of the senate; and in Massachusetts they are appointed by the governor with the advice and consent of the council. In Connecticut judges of the superior court are appointed by the legislature upon nomination by the governor. Judges of the general trial courts in Vermont, Virginia, and South Carolina are elected by the legislature on the joint vote of the two houses. While district and circuit judges are usually elected from a judicial district which is larger than the county, and the judges of such courts are held to be state officers, sessions of these courts take place in each organized county. A good many larger counties constitute judicial districts for the election of such judges, and a number of judges may be selected for such districts. Thus Cook County is one of the judicial districts in

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[1] Clarence N. Callender, *American Courts* (1927), appendix.

Illinois, and 20 circuit judges and 20 superior court judges are elected in that county.

In about one third of the states local courts are established in each county, usually in addition to the courts of general jurisdiction just noted; and in other states county courts are established in some counties. The states having such courts do not fall into any geographical or population group, but include both large and small states scattered throughout the country. In Illinois, Missouri, Nebraska, North Dakota, South Dakota, Colorado, Oklahoma, and Texas, the state constitution provides that such courts be courts of record.

There is usually one judge for each county court, but some states provide for a greater number of judges. In New York the number of judges in any county may be increased by the legislature as long as the number of judges does not exceed one for each two hundred thousand population in each county.[2] The constitution provides that there shall be one judge for each county, but the legislature may create districts of two or more contiguous counties in each of which districts there shall be elected one judge; and in the large counties of the state there is a probate judge as well as a county judge. The term of county judge is most often four years, but it varies from two years in Arkansas, Oklahoma, Texas, North Dakota, and South Dakota to six years in New York and West Virginia.[3]

The jurisdiction of the county courts shows great variation. In Pennsylvania and Ohio, the courts of common pleas, and in California the superior courts of each county, are courts of general original jurisdiction. More often the jurisdiction of the county courts is limited; as in New York and Colorado to cases in which the value of the property in controversy does not exceed two thousand dollars.[4] In North Dakota and Oklahoma, such courts have jurisdiction where the amount in controversy does not exceed one thousand dollars; and in Florida, over civil suits in which less than five hundred dollars is involved.[5] The jurisdiction of county courts in criminal cases is also usually limited, and in some states they have none. In Nebraska they do not have jurisdiction in cases in which the punishment may exceed six months imprisonment or a fine of over five hundred dollars; in North Dakota and South Dakota their jurisdiction is limited to criminal actions below the grade of felony;[6] and in some cases their criminal jurisdiction is limited to misdemeanors. County courts usually have appellate jurisdiction over minor courts.

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[2] In West Virginia there are three judges in each county court, and in Missouri, the constitution provides that there be one or more judges; but in these states the county court is an administrative body with no judicial functions.

[3] *Index Digest of State Constitutions,* 1915, p. 312.

[4] *Const. of Colo.,* Art. VI, sec. 23; *Const. of N. Y.,* Art. VI, sec. 14.

[5] *Const. of N. D.,* Art. IV, sec. 111-12; *Const. of Okla.,* Art. VII, secs. 12. 13, 17; *Const. of Fla.,* Art. V, sec. 20.

County courts in some states have other than judicial functions, while in others they have only non-judicial duties. In Kentucky and Tennessee the county court has administrative as well as judicial functions, as was general in the Southern states in former times. In Georgia, Arkansas, and Oregon, the county judge has probate jurisdiction and administrative powers, but no jurisdiction in civil and criminal cases. In most of the Wisconsin counties and in North Dakota, the county judge has jurisdiction only in probate matters; and in West Virginia and Missouri, the county court is a purely administrative body, with no judicial functions. In Illinois the county court has jurisdiction over election and tax matters, and in most counties has also probate functions.

In addition to county courts and courts of general jurisdiction there are minor local courts held by justices of the peace, municipal courts in cities, and other special courts, or specialized divisions for juvenile cases and other matters.

The administration of justice in the American states is thus largely decentralized in localized courts held in each county, in most states by judges elected in local districts, with the aid of other county officers. But judicial administration is at the same time subject to a recognized superior authority, the supreme court or court of appeals. Through the system of appeals the decisions of the lower courts are brought into harmony with each other, and general rules of law are established for the state.

PROBATE COURTS

Courts for the probating of wills and settlement of estates have been established in most states. The origin of these courts can be traced to the ecclesiastical courts of England, the jurisdiction of which included the probate of wills. While the chief function of probate courts is to probate wills and regulate and supervise the management and settlement of estates of deceased persons they have been given some other duties. They usually have control over the estates of minors and others who are under the special protection of the law, as insane persons, and, in some states, of drunkards. Such courts in a few states have been given a limited jurisdiction in civil and criminal cases. While there is some variation in the jurisdiction of the probate courts their general functions are very much the same in every state. But there is not this uniformity on the side of organization; the practice of the states varies greatly.[7]

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[6] *Const. of Neb.*, Art. V, sec. 16; *Const. of N. D.*, Art. IV, secs. 111-12; *Const. of S. D.*, Art. V, secs. 20-21.

Probate administration is somewhat more decentralized than the ordinary civil and criminal jurisdiction. In most states the settlement of estates is a county function. Where a regular system of county courts has been established, they are usually invested with this authority; and in some cases the probate administration is their only function of a judicial nature. In a number of states (including Alabama, Arkansas, Connecticut, Idaho, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, Ohio, and South Carolina) special courts for probate work have been established. Special probate courts are provided in the larger Illinois counties; in the others this is a function of the county court. Usually these special courts are known as probate courts and the judges as probate judges. But in New York and New Jersey the probate judges are called surrogates; in Pennsylvania, Delaware, and Maryland probate courts are known as orphans' courts; and in Georgia there has been revived the title of ordinary, taken from the judge of the old English ecclesiastical courts.

In some of the New England states probate jurisdiction is exercised in districts smaller than a county. In Vermont some counties are divided into probate districts; others constitute a single district. In Connecticut there are over a hundred probate judges, each with jurisdiction in a small district containing one or more towns. And in Rhode Island each town is a probate district, the town council exercising probate jurisdiction. On the other hand, in some of the Southern and Western states probate jurisdiction is vested in the judges elected in districts embracing a number of counties. Probate jurisdiction is conferred upon the district courts in Iowa, Louisiana, Montana, Nevada, Utah, and Wyoming. In some states commissioners may be appointed in the counties within the district to act in probate matters.

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[7] Clarence N. Callender, *American Courts* (1927), ch. 11, appendix; Bouvier's *Law Dictionary* (Rawle's 3rd Rev.), vol. 1, p. 712; *Plant v. Harrison,* 74 N. Y. S. 411, 439 (1902); *Ferris v. Higley,* 20 Wall. 382 (1874); *Robinson v. Fair,* 128 U. S. 53 (1888).

Special probate judges are nearly always elected by popular vote, even where other methods of selection are used for judges in the regular courts. Thus county probate judges in Maine, and probate judges for smaller districts in Connecticut, are elected. But in Massachusetts, judges of probate, like all other judges in that state, are appointed by the governor and council.

In some states there has been established the office of public administrator, to take charge of the estates of persons without known relatives or friends. In Missouri, California, and Montana this is an elective county office. In Alabama and Tennessee the incumbent is appointed by the probate judge or county court. And in some other Southern states the sheriff acts ex officio in this capacity.

THE SHERIFF

Every county has a sheriff; he is "the chief executive and administrative officer of the county, representing the executive or administrative power of the state within his county." The sheriff has been referred to as "the highest purely executive officer of a county."[8] While the position has lost much of the dignity and importance of the all-powerful Norman sheriff, and is of less significance in the United States than in England at the present time, it is nevertheless one of the principal county offices. It may be called the constituent office of the county. "Without a sheriff there is no shire."[9]

The Supreme Judicial Court of Maine has pointed out that: "The office of sheriff is one of the oldest known to the common law. It is inseparably associated with the county. He is the chief executive officer of the state in his county. The office of sheriff is recognized in the earliest annals of English law. It is much older than Magna Charta. Under all systems of government which have recognized the law as the supreme rule of action it has been found absolutely necessary to vest in some one person the ultimate power to preserve the peace and quell disorder and suppress riots and this person is the sheriff."[10]

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[8] *Black's Law Dictionary* (2nd. ed.), p. 1082; *Bouvier's Law Dictionary* (3rd ed.), vol. 3, p. 3058; *State v. Pratt*, 68 So. (Ala.) 255 (1915).

[9] George E. Howard, *Local Constitutional History* (1889), p. 455.

With the exception of a single state, sheriffs in this country are elected by direct popular vote in each county. In Rhode Island they are selected by the general assembly of the state for a three-year-term.[11] By constitutional provisions the term of sheriff is fixed at two years in fifteen states;[12] at four years in ten others;[13] and at three years in New York and New Jersey. In a few states, as Massachusetts, California, and Washington, the term of sheriff is left to be determined by the state legislature.

At least nineteen states, by constitutional provision, restrict the right of a sheriff to succeed himself in office. In some states it is provided that he is not eligible as his own successor;[14] in others he is not eligible for more than four years in any six.[15] In Kansas, North Dakota, and South Dakota he may not hold office for more than two successive terms; in Tennessee no person may act as sheriff for more than six years in any period of eight years.[16]

In England a sheriff must be a landed proprietor, and this requirement establishes his responsibility for damage suits in connection with his ministerial functions. The only qualifications required in the United States, however, are citizenship, adult age, and residence in the county. In Kentucky the sheriff must be twenty-four years of age, and in Maryland twenty-five years of age; and in New Hampshire no person may hold the office of sheriff after attaining the age of seventy years.[17] As a substitute for the security of landed estates in England, the American sheriff is required to furnish bonds for the faithful discharge of the duties of the office.

Sheriffs are assisted by deputy sheriffs, who are appointed by the sheriff and act under his control. Deputy sheriffs may perform any ministerial act within the power of the sheriff; and the latter, as a general rule, is held personally liable for the errors and mistakes of his deputies. The Supreme Court of Arkansas has stated the rule of liability as follows: ''The general rule is that for all civil purposes the acts of a deputy sheriff or constable are those of his principal. Hence a sheriff or constable is liable for the act, default, tort, or other misconduct done or committed by his deputy, colore officii.'' [18]

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[10] *Sawyer v. Commissioners of Androscoggin County*, 102 Atl. (Me.) 226 (1917). Also see *State v. Reichman*, 188 S.W. (Tenn.) 225 (1916).

[11] *Gen. Laws of R. I.*, 1923, sec. 379.

[12] Arizona, Arkansas, Delaware, Indiana, Maine, Maryland, Montana, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Texas, Wisconsin, and Vermont.

[13] Alabama, Connecticut, Florida, Illinois, Kentucky, Louisiana, Mississippi, Missouri, South Carolina, and West Virgina.

[14] Alabama, New York, and Pennsylvania.

[15] Indiana, Michigan, and Ohio.

[16] *Const. of Kas.*, Art. IV, sec. 2; *Const. of N. D.*, Art. X, sec. 173; *Const. of S. D.*, Art. IX, sec. 5; *Const. of Tenn.*, Art. VII, sec. 1.

[17] *Const. of Ky.*, sec. 100; *Const. of Md.*, Art. IV, sec. 44; *Const. of N. H.*, Art. II, sec. 77.

The question arises in connection with the sheriff, as in the case of prosecuting attorney, as to whether he is a state or a county officer. Although locally selected, sheriffs are engaged primarily in the enforcement of state laws, and in that respect may be considered to be agents of the state. The power which has been conferred upon governors in some states to remove locally elected sheriffs is in keeping with the principle that he is responsible to the state.

On the other hand, at common law a sheriff has no jurisdiction beyond the borders of his county; and the courts in various states have held that, in the absence of specific provisions in the constitution or statutes, a sheriff has no authority outside of his county to execute an attachment for contempt of court, to make an arrest, to subpœna a witness, to serve process or to levy on and sell land or other property.[19] The Supreme Court of Mississippi has stated that ''ordinarily, when the sheriff of one county goes into another county, he has no more right to carry a weapon concealed than any other private citizen.'' The Kentucky Court of Appeals has held that ''the sheriff is not an officer of the state,'' but that sheriffs are ''strictly county officers.''[20]

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[18] *Edgin v. Talley,* 276 S.W. (Ark.) 591 (1925). Also see *Coles v. McNamara,,* 230 Pac. (Wash.) 430 (1924). For state laws which specifically provide that the sheriff is liable for the acts of his deputies see: *Digest of Stat. of Ark.,* 1921, p. 2351; *Rev. Stat. of Kas.,* 1923, 19-812; *Burn's Ann. Ind. Stat.,* 1926, vol. 3, sec. 11861; *Rev. Gen. Stat. of Fla.,* 1920, vol. 2, sec. 2881.

[19] *State v. Harrell,* Ga. Dec. 130 (1842); *Finley v. S. C. Canal and R. Co.,* 2 Rich. Law 567 (S. C. 1846); *Jones v. State,* 26 Tex. App. 1 (1861); *Alfred v. Montague,* 26 Tex. 732 (1863); *Morrell v. Ingle,* 23 Kas. 32 (1879); *Whahoe Co. v. Humboldt Co.,* 14 Nev. 123 (1879); *Jones v. Baxter,* 41 So. 781 (Ala. 1906); *Goetchins v. White,* 11 Ga. App. 456 (1912); *Farmer's State Bk. v. Wilson,* 34 Okl. 755 (1912). Under the Illinois Criminal Code of 1845, a sheriff was authorized to arrest a person charged with crime who had escaped from the county; and under the Revised Statutes of 1874 this has been extended to apply to accused persons found in any county of the state. *Ressler v. Peats,* 86 Ill. 275 (1877). The Ohio statutes provides for the issue of warrants and subpœnas addressed to the sheriff of any county where indicted persons or witnesses may be found. *Page's Ann. Gen. Code* (1926), secs. 13598, 13662.

At common law no compensation was allowed to sheriffs. But statutes now authorize the payment of fees or a fixed salary to the sheriff and his deputies. In some states the sheriff is paid entirely by fees; in some cases he receives a fixed salary; while in other states he receives both a salary and fees.[21] In any case the office is among the best paid of the county posts; and where the fee system was in force in counties with a large city the net compensation has often been excessive. Many evils have developed in the case of the fee system and it is being gradually abolished in favor of a fixed salary. Thus by act of 1925, the legislature of the state of Missouri fixed the salary of the sheriff of the city of St. Louis at $10,000. It was also provided that the sheriff shall pay into the city treasury all fees earned during any calendar month by the tenth day of the succeeding month. The law provides further that he file with the comptroller of the city quarterly itemized financial reports.

Sheriffs do not exercise the judicial functions which formerly were an important part of their power in England, and constitute their principal duties in Scotland at the present time. In other respects, too, the sheriff's authority has been diminished by changes in conditions and methods of government. The most general powers of American sheriffs may be considered in two classes: those as conservators of the peace, and as ministerial agents for executing the decrees of the courts of justice.

As conservator of the peace in his county, the sheriff is the representative of the sovereign power of the state. ''He may upon view, without writ or process, commit to prison all persons who break the peace or attempt to break it; he may award process of the peace and bind any one in recognizance to keep it. He is bound ex officio, to pursue and take all traitors, murderers, felons, and other misdoers and commit them to jail for safe custody. For this purpose he may command the *posse comitatus,* or power of the county; and this summons every one over the age of fifteen years is bound to obey."[22]

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[20] *Shirley v. State,* 57 So. 921 (Miss., 1912); *Shipp v. Bradley,* 275 S.W. 1 (Ky.) 1925.

[21] For the various methods of paying sheriffs see: *Ann. Code of Tenn.,* Supp., 1925, sec. 6402 al; *S. D. Rev. Code,* 1919, vol. 2, sec. 5962; *Sess. Laws N. M.,* 1915, ch. 12; *Kas. Rev. Stat.,* 1923, 29-110; *Ia. Code,* 1927, sec. 5226; *Gen. Rev. Stat. of Fla.,* 1920, vol. 2, sec. 2891; *Rev. Stat. Maine,* 1916, p. 1431; *Sess. Laws Wyo.,* 1927, p. 59; *Laws of N. D.,* 1927, p. 133.

This power of the sheriff to maintain the peace becomes of special importance in times of serious disturbance and threatened riot. It rests with the sheriff to decide what measures to take to suppress an outbreak; and if the disorder becomes too great to control by his deputies, he may command the *posse comitatus.* The statutes provide varying penalties for refusal to serve in the *posse comitatus,* or power of the county. "A member of a *posse comitatus* summoned by the sheriff to aid in the execution of a warrant for felony in the sheriff's hands is entitled to the same protection in the discharge of his duties as the sheriff himself; and to this end a person so summoned may do any act to promote or accomplish the arrest which he could lawfully do were he himself the sheriff, having personal custody of the warrant and bound to execute the same."[23] If the disorder becomes so great that the sheriff cannot control it by his deputies and the *posse comitatus,* he may call on the governor of the state for militia; and in extreme cases, through the governor, he may ask for national troops.

In ordinary times the authority of the sheriff as chief peace officer in the county is of less significance. There are few organized bodies of county police in any of the states; and neither the police in cities nor constables in rural districts are under his active supervision. Nevertheless a good deal depends on the sheriff in the maintenance of order and the enforcement of statutes against gambling and the liquor traffic. In the Southern and Western states disturbances of the peace have been more frequent in the rural districts and sheriffs are more active in arresting violators of the law on their own motion. But in many parts of the country there is need for a more effective system of rural police.[24]

There is usually a more highly organized and efficient law enforcement service in cities than is found in the sheriff's office. Under these circumstances sheriffs usually devote most of their time to the problem of law enforcement in the rural areas and give little concern to law enforcement in the cities. In some cases, however, the city and county law enforcement officers fail to coöperate, and at times come into conflict in matters of law enforcement.

[22] *South v. Maryland,* 18 Howard (U. S.) 396, 402 (1855).

[23] *Robinson v. State,* 18 S.E. (Ga.) 1018 (1893).

[24] See Chapter XIII for a discussion of state and rural police.

With reference to the authority of the sheriff as conservator of the peace, it has been stated that, "his power is largely a discretionary one. In all times of great emergency, or in a crisis of unusual danger, the limits under which his discretion may be exercised have been held by the courts not to be fixed." [25] No civil action can be held against him for his default or misbehavior as conservator of the peace, by those who suffer injury to their property or persons through the violence of mobs, riots or insurrections.[26]

The sheriff may, however, be held responsible for serious neglect of his duties in the enforcement of law by removal from office. The Supreme Court of Tennessee in a case before it in 1916, sustained the removal of a sheriff because of his failure to enforce the prohibition law. The court was unable to agree that the sheriff was a mere process server, or that he may discharge the duties of his office, by being passive until some one swears out a warrant for him to serve. "His duties are not merely to apprehend those who have committed offenses but to prevent such offenses." The court said it did not mean that it was the duty of the sheriff to patrol the county as the streets of the city are patroled by the police or to maintain a detective force to ferret out crimes. It declared, however, that "it is the duty of the sheriff and his deputies to keep their eyes open for evidence of public offenses, and that it is a distinct neglect of duty for them to ignore common knowledge of law violations or to intentionally avoid being where they have reason to believe that such offenses are being committed." The court pointed out that "the duties and powers of a sheriff within the limits of an incorporated city are precisely the same as they are in the remainder of the county." Thus if a sheriff knows that the city officials are deliberately ignoring or permitting a certain class of offenses, "his duty to prevent and suppress such offenses is the same as it would be if there was no municipality and no police force." [27]

Most of the work of the sheriff's office is as executive agent of the courts. At each session of the higher courts he must be present in person or by deputy, and maintain order in the court room. He carries into execution the various orders of the courts in connection with the cases before them. These are classed under two heads, as mesne process and final process. The former includes all writs and orders from the beginning of a case up to, but not including, the final decree or judgment; and embraces summons to defendants, warrants of arrest, subpœnas to witnesses, writs of attachment and other orders. All of these must be served by the sheriff or his deputies. Final process in civil suits involves the collection of the amounts awarded by the judgment, if necessary by the seizure and sale of property.

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[25] *Commonwealth v. Martin,* 8 Kulp (Pa.) 69, 73 (1898).

[26] *South v. Maryland,* 18 Howard (U. S.) 396 (1855); cf. *Appeal of Jenkins,* 58 N.E. (Ind.) 560 (1900).

[27] *State v. Reichman,* 188 S.W. (Tenn.) 225 (1916).

In these matters the responsibility of sheriffs is great: "They must perform their whole duty promptly and faithfully, but they must not exceed their authority and there must be no error in the discharge of their duties."[28] Failure in either respect renders them liable for damages to the party aggrieved. In considering the liability of a sheriff, the Supreme Court of the United States has stated that it is an undisputed principle of the common law, that for a breach of public duty an officer is subject to indictment and, "where he acts ministerially, and is bound to render certain services to individuals, for a compensation in fees or salary, he is liable for acts of misfeasance or non-feasance to the party who is injured."[29]

In criminal cases the sheriff is keeper of the county jail, has custody of the prisoners confined there, and delivers to state institutions prisoners sentenced to them. In most states he has charge of hanging criminals sentenced to death; but in a few states the death sentence is no longer used, and in several states death by electrocution, which has been substituted for hanging, is carried out at the state prisons.

The sheriff must exercise reasonable care for the preservation of the life and health of prisoners under his charge. He is liable to a suit for damages for the death of a prisoner by mob violence where he has failed to take proper safeguards, and in a few states he may be removed from office for negligence in protecting prisoners.

Sheriffs have duties in some states which are not closely related to their main functions in enforcing the criminal law. In several states there is a survival of the old fiscal powers of the sheriff by designating him ex officio as tax collector. This arrangement exists regularly in North Carolina, Louisiana, Mississippi, and Arkansas, for small counties in Texas and California, and for counties without township organization in Illinois. In some other states he may be called upon to enforce the collection of delinquent taxes. Another survival of his former powers as returning officer of elections is his duty in many states to make official announcement of forthcoming elections. In some Southern states the sheriff acts ex officio as public administrator, a function probably derived from his earlier power to look after estates which escheated to the Crown. Still other duties are often imposed on him by statute in the various states.

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[28] J. G. Crocker, *Duties of Sheriffs*, p. 125.

[29] *South v. Maryland*, 18 Howard (U. S.) 396 (1855).

With the transfer of many powers formerly possessed, and the development of new offices, the sheriff has lost his position as chief county officer. But the powers retained and the traditions of the position stand in the way of any other office attaining that rank. One of two changes in the situation would seem to be advisable. Either the sheriff should again become the chief executive officer of the county, transferring the ministerial functions to an under-sheriff, or some other officer should become the chief executive, and the sheriff be confined to his ministerial duties as court bailiff.

THE PROSECUTING ATTORNEY

An important officer in the general trial courts throughout the United States is the official attorney who conducts criminal prosecutions and represents the public authorities in civil suits. The prosecuting attorney is variously designated in the different states as prosecuting attorney,[30] district attorney,[31] state's attorney,[32] county attorney,[33] and solicitor;[34] and each title is used in widely separated states. While in most states he is an elective officer, in New Jersey the prosecutor of the pleas is appointed by the governor with the consent of the senate.[35] In Florida the governor, with the consent of the senate, appoints a "state attorney" in each judicial circuit for a four-year-term. There may also be established in the counties of Florida, upon application of a majority of the registered voters in such counties, a criminal court of record; and in case such court is established, a prosecuting attorney is appointed by the governor, with the consent of the Senate, for a four-year-term.[36]

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[30] Arkansas, Indiana, Michigan, Missouri, Minnesota, Oregon, Washington, and West Virginia. In New Jersey his title is prosecutor of the pleas.

[31] California, Idaho, Massachusetts, Mississippi, Nevada, New Mexico, New York, Pennsylvania, and Wisconsin.

[32] Illinois, Maryland, North Dakota, South Dakota, Tennessee, and Vermont.

[33] Arizona, Iowa, Maine, Montana, Oklahoma, Texas, Utah; in Wyoming the title is county and prosecuting attorney.

[34] Alabama, New Hampshire, North Carolina, South Carolina; and in Georgia the title is Solicitor General. In Virginia and Kentucky the title is Attorney for the Commonwealth.

[35] *Const. of N. J.*, Art. VII, sec. 2, clause 4.

Since the prosecuting attorney is engaged primarily in the enforcement of state law there is strong reason for making him a state appointed officer, with supervision over other local law enforcing officers. The objection may be raised that he also gives advice to the county board and other county officers upon all matters in which the county is interested or relating to the duties of their offices.[37] In some cases it is provided that all county officers may require of him written opinions or instructions in matters connected with their official duties. It may be thought that the county board should have more control over the man upon whom they must depend for advice.[38]

Several states provide for a local county counsel in addition to the prosecuting attorney. In New York, while the district attorney who is elected in each county conducts all prosecutions for crimes, the county board of supervisors may also appoint a county attorney who is removable at its pleasure. The term of office of a county attorney is two years unless sooner removed; his salary is fixed by the board of supervisors. The board of supervisors may prescribe the duties of the county attorney, which duties may include services to town boards and town officials, when not in conflict with the interests of the county.[39]

In Pennsylvania, while criminal cases are conducted by the district attorney who is elected by the voters of the county, the county commissioners may also appoint a county solicitor who must be an attorney at law. It is his duty to prosecute suits brought by the county and to defend suits against the county.[40] Mississippi has a system of district prosecuting attorneys, but by act of 1916, has made it possible for a county by popular vote to create the office of county prosecuting attorney.[41] Utah and some other states also have both a district attorney and a county attorney.[42] This plan of special counsel for county officers seems practicable in the case of populous counties, but when we consider the size and the functions performed by the great majority of American counties, it seems probable that the amount of work for a county counsel would not be adequate to warrant paying a salary that would secure the services of a competent attorney. If the office should be established, in many cases it would probably be an underpaid office which would not attract a high type of legal talent. An optional provision for a locally appointed county legal advisor for the larger counties would meet this situation.

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[36] *Const. of Fla.*, Art. V, secs. 15, 27.

[37] See for typical statutes in point: *Page's Ohio Gen. Code*, vol. 1, sec. 2917; *Comp. Okla. Stat.*, 1921, vol. 2, sec. 5743; *S. D. Rev. Code*, 1919, vol. 2, sec. 6000.

[38] See Kirk H. Porter, *County and Township Government in the United States* (1922), pp. 189-193.

[39] Birdseye, Cumming, and Gilbert's *Consol. Laws of New York* (2nd. ed.), vol. 2, p. 1536.

[40] *Pa. Stat. Complete to 1920*, secs. 7584-7550, 9084-93.

The prosecuting attorney is in most states elected for the county, but in some states he is chosen for a district larger than the county. Most of the states in which he has jurisdiction over an area larger than a county are in the South (North and South Carolina, Georgia, Florida, Tennessee, Alabama, Mississippi, and Arkansas); but the system is followed also in Colorado, New Mexico, and Oregon. In Massachusetts prosecuting attorneys are selected for districts, which in some cases are composed of more than one county.[43]

While some states leave the term of prosecuting attorney to be fixed by the state legislature, in fourteen the term is fixed by constitutional provision at four years,[44] and eleven state constitutions fix the term at two years.[45] The term of the prosecutor of pleas in New Jersey is five years; that of the commonwealth's attorney in Kentucky is six years; while the state's attorney in Tennessee is elected for a term of eight years.[46]

The office of prosecuting attorney marks a striking development in American criminal procedure in contrast to the English common law, at which criminal prosecutions were for the most part instituted and carried on by private persons. But, at the same time, it is an expansion of the old English office of attorney-general, who conducted suits in the courts on behalf of the central government. Each of the colonies had an attorney-general; and, beginning with Connecticut in the early part of the eighteenth century, provision was made for local assistants to these officers, from whom have developed the present officials. North Carolina was one of the first to follow Connecticut. In New York assistant attorneys-general were provided for in 1796, and the system of local prosecuting officers has long been firmly established in all of the states.

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[41] *Hemingway's Ann. Miss. Code,* 1927, vol. 1, secs. 708-710.

[42] *Comp. Laws of Utah,* 1917, secs. 1451, 5772.

[43] *Gen. Laws of Mass.,* 1921, vol. 1, ch. 12, sec. 13.

[44] Alabama, Colorado, Florida, Georgia, Illinois, Kentucky, Louisiana, Maryland. Mississippi, North Carolina, New Mexico, South Carolina, West Virginia, and Virginia.

[45] Arizona, Arkansas, Idaho, Indiana, Montana, South Dakota, Texas, Utah, Iowa, North Dakota, and Vermont.

[46] *Const. of N. J.,* Art. VII, sec. 2, clause 4; *Const. of Ky.,* sec. 97; *Const. of Tenn.,* Art. VI, sec. 5.

Several state constitutions provide that the prosecuting attorney must have been admitted to the practice of law, or that he must have practiced law for a certain number of years;[47] others provide that he must be learned in the law.[48] In some states such qualifications have been established by statute or have been held by the courts to be involved in the nature of the office.[49] But in others the courts have held that such a requirement is not essential, and even that the legislature has no power to add to the qualifications prescribed in the constitution.[50] Whatever the law, it is certainly necessary for a competent discharge of the duties of the office that the incumbent should have a legal training.

Prosecuting attorneys are sometimes paid by fees and sometimes by a fixed salary. In some cases their fees depend on the cases in which they secure a conviction. Thus in Florida the salary is four hundred dollars per year and five dollars for each conviction.[51] This is an incentive to vigorous prosecutions, but one which may sometimes be carried too far, and lead to the conviction of innocent persons.

The office of prosecuting attorney has been held to be a state office in some states;[52] a county office in others;[53] and in others neither a state nor a county office but a district office.[54] But regardless of the legal status of the office, the prosecuting attorney is engaged primarily in the enforcement of state law; and in view of this situation some states provide that a part of his salary be paid by the state. By constitutional provisions, the attorneys for the commonwealth in Kentucky are paid by the state; in Texas, the legislature is to provide for the compensation of district attorneys, but they are to receive five hundred dollars from the state; and in Montana one half of the salary, which is fixed by law, is to be paid by the state and the other half by the county.[55] In Illinois, a part of the salary of state's attorneys is paid by the state.[56] In New Mexico, the salaries of district attorneys are paid by the state, but a certain contribution must be made by each county.[57]

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[47] See the following constitutional provisions: *Const. of Idaho,* Art. V, sec. 18; *Const. of Md.,* Art. V, sec. 10; *Const. of Mont.,* Art. VIII, secs. 16, 19; *Const. of Ga.,* Art. VI, sec. 14; *Const. of Ky.,* sec. 100.

[48] See the following constitutional provisions: *Const. of Ark.,* Art. VI, sec. 167; *ibid.,* Art. VII, sec. 24; *Const. of Colo.,* Art. VI, secs. 16, 21; *Const. of N. M.,* Art. VI, sec. 24; *Const. of S. D.,* Art. V, secs. 24-25.

[49] *People v. May,* 3 Mich. 598 (1855); *People v. Hallet,* 1 Colo. 352 (1871); *Danforth v. Egan,* 119 N.W. (S. D.) 1021 (1909).

[50] *People v. Dorsey,* 32 Calif. 297 (1867); *State v. Clough,* 23 Minn. 17 (1876); *Howard v. Burns,* 85 N.W. (S. D.) 920 (1901).

[51] *Gen. Rev. Stat. of Fla.,* 1920, vol. 2, sec. 5987.

Most important among the duties of prosecuting attorneys are those connected with criminal prosecutions. They must decide whether or not to commence a prosecution; to this extent "a public prosecutor is a quasi judicial officer."[58] There are cases of technical violations of law where no public interest would be served by pressing the charge; and there are many criminal cases where the evidence is clearly insufficient to secure conviction. Under such circumstances the prosecuting officer should not institute proceedings. On the other hand, they have no power to make an agreement not to prosecute a particular person, and they are not justified in declining to prosecute because they disapprove of the law, or believe the accused should be pardoned. It has been held by the Supreme Court of Arkansas that "while the law does not impose the duties of a detective upon a prosecuting attorney, it does impose upon him ordinary diligence in discovering and abating crime."[59]

In most states criminal prosecutions, except for petty crimes, must be based on an indictment by a grand jury. The prosecuting attorneys, however, usually collect the evidence and prepare most of the cases that come before grand juries, and give advice which has much influence in determining what indictments shall be brought. But they cannot compel the bringing of an indictment, nor prevent a grand jury from considering charges by declaring that the government will not prosecute.

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[52] *Speer v. Wood*, 193 S.W. (Ark.) 785 (1917); *State v. Romero*, 125 Pac. (N. M.) 617 (1912).

[53] *Cook County v. Healey*, 78 N.E. (Ill.) 623 (1906); *Clark v. Tracy*, 64 N.W. (Ia.) 290 (1895).

[54] *Merwin v. Boulder County*, 67 Pac. (Colo.) 285 (1901).

[55] *Const. of Ky.*, secs. 77, 98; *Const. of Texas*, Art. V, sec. 21; *Const. of Mont.*, Art. VIII, sec. 19.

[56] *Cahill Ill. Rev. Stat.*, 1927, ch. 53, secs. 7-9

[57] *Laws of N. M.*, 1921, pp. 308-09; *ibid.*, 1927, pp. 373-374.

[58] *Ex parte Bentine*, 196 N.W. (Wis.) 213 (1923).

[59] *Speer v. State*, 198 S.W. (Ark.) 113 (1917).

Several states have dispensed with grand juries in ordinary cases; and in these the influence and importance of prosecuting attorneys are greatly increased. Criminal trials are begun on what is called an information, presented by the prosecuting attorney; and it thus rests with him alone to determine whether any particular case shall be brought to trial.

Formerly public prosecutors could discontinue a criminal trial, by entering a *nolle prosequi*,[60] a step which does not prevent subsequent prosecution on the same charge. In some states this rule is still followed, but in others this action can be taken only with the approval of the court.[61]

In the conduct of a prosecution the attorney for the public is not supposed to act as counsel for those who bring complaints against a prisoner; but as a public official aiding in the administration of justice. He should treat the prisoner with judicial fairness. "The prosecuting officer represents the public interest, which can never be promoted by the conviction of the innocent. His object, like that of the court, should be simply justice; and he has no right to sacrifice this to any pride of professional success."[62]

Criminal prosecutions are brought in the name of the state, and the prosecuting attorney in such cases is acting as agent of the state, rather than as a local officer. At the same time the most direct results of his activity are in relation to the people of the community. He can prevent malicious prosecutions, and bring promptly to punishment those who violate the criminal law. Or, if he is negligent and inefficient, the guilty may escape and innocent parties may be put to serious annoyance.

The criminal jurisdiction of the prosecuting attorney extends to public officials as well as to private individuals.[63] These officials are not only subject to the ordinary criminal law, but misconduct in connection with their official duties often subjects them to criminal penalties. The effectiveness of this judicial control over public officers depends very largely on the activity of the prosecuting attorneys; and the frequent charges of corruption on the part of municipal and other local officials have made this side of the prosecutors' duties of special importance. Unfortunately the close political relations of prosecuting attorneys to accused officials have sometimes led them to ignore or neglect such cases. In other instances vigorous action in prosecuting cases of this kind has redounded to their credit. It may be noted that in the states where grand juries are not used in ordinary criminal cases, they are sometimes summoned to present indictments against public officials.

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[60] A declaration that he will not further prosecute the particular indictment. Abbreviated *nol. pros.*

[61] *State v. Moise,* 48 La. Ann. 109 (1896).

[62] *Hurd v. People,* 25 Mich. 405 (1872).

In addition to criminal cases, these public attorneys also act in civil matters. As attorneys for the state, they may be called on to represent the state in any civil suit to which it is a party, and, at least in the states where they are elective county officers, they represent in the same way the counties or other county officers in civil suits, and also act as their legal advisers.

THE PUBLIC DEFENDER [64]

In recent years the office of public defender has been established in a few communities, as a means of furnishing more competent legal assistance to those accused of crime who may be unable to secure adequate legal service.

While, as has been noted, it is the duty of the public attorney to secure justice and treat accused persons with fairness, the main emphasis of his work is directed towards securing convictions.

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[63] F. J. Goodnow, *Principles of the Administrative Law of the United States* (1905), pp. 298, 411.

[64] R. H. Smith, *Justice and the Poor* (1919); M. C. Goldman, *The Public Defender* (1917); W. J. Wood, *The Place of the Public Defender;* W. J. Wood, ''Necessity for Public Defender Established by Statistics,'' 7 *Journ. of Criminal Law and Criminology,* 230-235 (1917); R. H. Smith, ''Defender in Criminal Cases,'' 12 *Journ. of Criminal Law and Criminology,* 499 (1922); W. J. Wood, ''The Office of Public Defender,'' 124 *Annals of Amer. Acad. of Pol. and Soc. Sci.,* 69-73 (1926); Reginald H. Smith and John S. Bradway, ''Growth of Legal Aid Work in the United States,'' *Bull. of U. S. Bureau of Labor Stat.,* No. 398 (1926).

When those brought to trial have financial means they are sometimes able to employ able attorneys who can present their cases more effectively than the prosecuting attorney. But if the accused is poor, he may be unable to employ an attorney, and the defense will be conducted by an attorney appointed by the court. Such attorneys appointed by the court to represent defendants without counsel are usually young lawyers who are willing to undertake this service for small fees on account of the experience in the conduct of the trial. They are likely to be less effective than an experienced prosecuting attorney, and the defendant is at a disadvantage. Even if more able and experienced attorneys are appointed, they are apt to give less time and attention to such cases, and the defense may not be adequately presented.

It is to meet this situation that the office of public defender has been proposed. The object is to provide at public expense a competent attorney to direct the defense of those unable to employ their own lawyers, and thus to give the poor defendant an equal opportunity with the prosecution.

The first public defender was established in Los Angeles county, California, in 1914. The movement has spread quite slowly since that time, so that by 1926 there were only twelve defenders' offices in the United States. Various methods are used for the selection of the public defender. He is elected in Nebraska counties of above 100,000 population; he is subject to civil service regulations in Los Angeles; and he is appointed by the judges of the county in Connecticut. In Minnesota counties of above 300,000 population the judges of the district court may by unanimous vote appoint a public defender for a four-year term.[65]

All of the public defenders thus far established have been in urban areas. In the case of the smaller rural counties the number of defendants who are unable to secure counsel and who would use the services of a public defender is so small that it is doubtful whether the situation warrants the creation of such an office. But in the more populous counties there is more need for such a position; and an extension of this movement may be expected.[66]

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[65] Two Minnesota counties have established public defenders; the salary of public defender in Hennepin county is $4000; and in Ramsey county it is $2400. William Anderson and Bryce E. Lehman, *County Government in Minnesota,* p. 115 n.

THE CORONER[67]

Next to the sheriff, the coroner is the oldest of our county offices, and it is the oldest elective county office. The coroner is "an ancient office of the common law,"[68] whose principal function is to hold inquests on the bodies of persons whose deaths are supposed to have been due to violence or other unlawful means. The importance of the office has been greatly reduced from that of the coroner of the thirteenth century, who had jurisdiction over a wide range of criminal matters and also over some civil pleas.

While in England the old method of electing coroners has been changed to appointment by the county councils, in this country popular election for terms of two to four years is still the prevailing rule. In some states, however, other methods are used. In Tennessee and West Virginia[69] coroners are appointed by the county court—in the former for a two-year term, and in the latter they serve at the pleasure of the county court. In Connecticut and Virginia coroners are appointed by the judges; in Maine and Mary-

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[66] The following table showing the number of cases handled by public defenders' offices indicates that in the more populous communities there is demand for such aid.

City	*Population 1920*	*Cases Handled 1923*	*Cases Handled per 100,000 Population*
Los Angeles	982,000	2487	253.3
Minneapolis	381,000	252	66.1
San Francisco	507,000	1019	201
Omaha	192,000	350	182.3
Bridgeport	144,000	200	138.9
Hartford	138,000	70	50.7
New Haven	163,000	750	460.1

(Reginald H. Smith and John S. Bradway, "Growth of Legal Aid Work in the United States," *Bull. of U. S. Bureau of Labor Stat.*, No. 398 (1926).)

[67] Oscar T. Schultz and E. M. Morgan, *The Coroner and the Medical Examiner* (1928)

[68] *Black's Law Dictionary* (2nd ed.), p. 272. Also see *Bouvier's Law Dictionary* (3rd ed.), vol. 1, p. 681.

[69] *Ann. Code of Tenn.*, 1917, vol. 1, sec. 465; *Barnes' W. Va. Code*, 1923, p. 2788.

land they are appointed by the governor with the consent of the executive council or senate.[70]

Massachusetts, by act of 1877, provided for appointment by the governor, with the advice and consent of the council, of medical examiners for seven-year terms, who take the place of coroners. Where the report of the medical examiner shows evidence of crime, further action is taken by the regular prosecuting officers.[71]

In Rhode Island coroners are elected by town councils for a three-year term; but in addition an act of 1923 provides for medical examiners, to be appointed by the governor with the advice and consent of the senate for a six-year term. They must make examination of the bodies of persons who are supposed to have come to their death by violence. If they are of the opinion that death was caused by the act or neglect of some other person they notify the attorney-general and coroner of the town where the body was found. The coroner must thereupon hold an inquest, which the attorney-general or some person designated by him may attend for the purpose of examining all witnesses.[72]

The governor of New Hampshire, with the advice and consent of the council, appoints in each county "able and discreet men, learned in the science of medicine" to be medical referees. The medical referee conducts an investigation in cases of the deaths of persons where violence or unlawful act is suspected. If upon general investigation and personal inquiry the medical referee deems a further examination necessary, he notifies the county solicitor. An inquest is held only upon the order of the attorney-general or county solicitor.[73]

In Vermont, if a selectman is informed that a dead body of a person supposed to have died by casualty or violence, is found lying within the town, he may, if the public good requires, apply to a justice or to a municipal or city judge of the county, who shall inquire into the cause and manner of the death of such person. In case an inquest is held the state's attorney must attend the hearing and conduct the examination.[74]

The judges of the superior court in Connecticut appoint for each county, upon the recommendation of the state's attorney, a coroner who must be an attorney at law. The coroner appoints for each town in the county an "able and discreet person learned in medical science." Whenever a person comes to "a sudden, violent or untimely death," the medical examiner must "without delay repair to and take charge of the body." Whenever a medical examiner believes that a person came to his death by the criminal act, omission or carelessness of others, he notifies the coroner who takes charge of the dead body and makes proper inquiry respecting the cause and manner of death.[75]

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[70] *Const. of Maine,* Art. V, sec. 8; *Const. of Md.,* Art. IV, sec. 45. Coroners in New York City are also appointed by the governor of the state.

[71] *Gen. Laws of Mass.,* 1921, vol. 1, ch. 38.

[72] *Gen. Laws of R. I.,* 1923, secs. 6380-6413.

[73] *Public Laws of N. H.,* 1926, vol. 2, ch. 376.

[74] *Gen. Laws of Vt.,* 1917, secs. 6611, 6616.

The judge of each corporation court, and of each circuit court of a county in Virginia, appoints for his city, or for each county in his circuit, as the case may be, one physician, who is the coroner of such city or county. If the court is of the opinion that one coroner is not sufficient, it may appoint as many more as may seem proper.[76]

In Nebraska the county attorney is ex officio county coroner and performs all of the duties enjoined by law upon county coroners. He receives no additional fees for the performance of the duties of county coroner, but is reimbursed only for all necessary expenses incurred by him in the performance of his duties.[77]

In Texas, New Mexico, and Utah, it is the duty of justices of the peace to hold inquests.[78] Thus in New Mexico it is the duty of each justice of the peace to inquire into the cause of death of any person who is found dead and where it may appear that death was caused by violence or other illegal means. He must also hold such inquests when requested to do so, in writing, by any two persons who are heads of families and voters in his precinct.

Usually no qualifications are required by law for coroners other than those of age, citizenship, and residence. But in Connecticut coroners must be "learned in the law"; in Massachusetts medical examiners must be "able and discreet men, learned in the science of medicine"; and in Louisiana the coroner must be a doctor of medicine, regularly licensed to practice.[79] In Michigan counties having over 250,000 population, coroners must be graduates of regularly incorporated medical colleges and must have practiced for at least fifteen years;[80] and in Ohio counties of over 100,000 population, the coroner must be a ''licensed physician of good standing in his profession.''[81]

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[75] *Gen. Stat. of Conn., Rev. of 1918,* vol. 1, secs. 224-247.

[76] *Va. Code of 1924,* Ann. sec. 2815.

[77] *Comp. Stat. of Nebr.,* 1922, sec. 4922.

[78] *Vernon's Ann. Criminal Stat. of Texas,* vol. 3, Art. 968; *N. M. Stat.,* Codification of 1915, sec. 3277; *Comp. Laws of Utah,* 1917, secs. 3220-39.

[79] *Const. of La.,* Art. 121.

Coroners are usually paid by fees. This has in some cases probably been the cause of unnecessary inquests being held, and in some larger cities it has also resulted in unreasonably large compensation paid. To remedy this situation coroners are in some instances paid definite salaries. County boards in New York may provide that coroners receive salaries instead of fees and fix the amount of such salary.[82] In Michigan counties of over 250,000 population, the salary of the coroner is fixed by the county boards but must be not less than $5,000.[83]

It is the duty of the coroner to hold an inquest when the circumstances surrounding a death are of such a character as to make it seem probable that it resulted from violence or other unlawful means. The inquest must be held upon a view of the body. The coroner empanels a jury, usually of six persons, and summons witnesses, and, as a general rule, a physician or surgeon, to give expert testimony. The procedure is distinctly different from a trial. It is not necessary that any person accused of murder be present, and such a one has no right to produce witnesses or to cross-examine those who testify, nor even to be represented by counsel unless at the pleasure of the coroner. The coroner instructs the jury on the law; and the jury gives a verdict as to the facts. Any person accused by the verdict is liable to arrest; and if not already in custody, the coroner should issue a warrant for his arrest and commit him to jail for trial.

Cases in which inquests are to be held are usually stated in the statutes. Thus they are to be held in Rhode Island ''upon bodies of such persons only as are supposed to have come to their death by violence''; in South Carolina coroners are ''to take inquest of casual or violent deaths,'' and in South Dakota upon ''such persons only as are supposed to have died by unlawful means.''[84] In several states coroners are also required to examine the bodies and hold inquests in the case of all persons who die while prisoners in the state prison or in any county jail.

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[80] *Comp. Laws of Mich.*, 1922, p. 203.

[81] *Page's Ann. Ohio Gen. Code*, vol. 1, p. 1174.

[82] Birdseye, Cumming, and Gilbert's *Consol. Laws of N. Y.* (2nd ed.), vol. 2, p. 1524.

[83] *Comp. Laws of Mich.*, 1922, p. 203.

[84] *Gen. Laws of R. I.*, 1923, sec. 6387; *Code of Laws of S. C.*, 1922, vol. 3, sec. 2106; *S. D. Rev. Code*, vol. 2, sec. 10179.

The primary purpose of a coroner's inquest "is to provide a means for the prompt securing of information for the use of those who are charged with the detection and prosecution of crime."[85] The finding of a coroner's jury "is advisory, merely, to the public authorities charged with the administration of the criminal law"[86] and "does not establish rights."[87] The determination of guilt or innocence is vested in the courts of law.

In some states, the courts hold that, when conducting an inquest, the coroner is acting in a ministerial capacity, while others hold that he is serving in a judicial capacity. The Supreme Court of Indiana has stated that, where the statutes provide that inquests be held only where death is supposed to have come by violence or casualty, the action of a coroner "being a ministerial power, it must be exercised within some reasonable presumption that the death resulted from violence or casualty. . . . His authority must be reasonably, and not arbitrarily, exercised."[88]

The Supreme Court of Pennsylvania, however, has held that in holding an inquest a coroner acts in a judicial capacity, and "the presumption is that he acted in good faith, and on sufficient cause." This presumption is not conclusive, however, but may be overthrown by evidence. The duty of a coroner to hold an inquest is "not a power to be exercised capriciously and arbitrarily against all reason. The object of an inquest is to seek information, and obtain and secure evidence, in case of death by violence or other undue means. If there be reasonable ground to suspect that it was so caused, it becomes the duty of the coroner to act. If he has no ground for suspecting that the death was not a natural one, it is a perversion of the whole spirit of the law to compel the county to pay him for such services."[89]

Expenses connected with an inquest are usually paid by the county or town. In West Virginia, however, they are paid out of the estate of the deceased where it is sufficient.[90] In some states the expenses of an inquest over one not a resident of the county is borne by the state.

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[85] *Mar Shee v. Maryland Assurance Corp.*, 210 Pac. (Calif.) 269 (1922).

[86] *Peoria Cordage Co. v. Industrial Board,* 119 N.E. (Ill.) 996 (1918). Also see *Jefferson County v. Cook,* 47 S.W. (Ark.) 562 (1898).

[87] *Stults v. Board of Commissioners of Allen County,* 81 N.E. (Ind.) 471 (1907).

[88] *Sandy v. Board of Commissioners of Morgan County,* 87 N.E. (Ind.) 131 (1909).

[89] *County of Lancaster v. Mishler,* 100 Pa. St. 624 (1882).

In addition to holding inquests, the coroner under certain circumstances may act as sheriff. Thus in case the office of sheriff is made vacant by death or otherwise, the statutes usually provide that the coroner shall perform all of the duties of the office of sheriff until another has been selected and qualified. In several states, when the sheriff is incompetent to act because he is personally interested in a suit, the coroner is required by law to perform the duties of sheriff.

CLERKS OF COURT

Most courts of record have a clerk or secretary to keep the record of their proceedings. Under the old English system, where the court of quarter sessions was also the administrative board of the county, the clerk of the court acted also as secretary in administrative matters. The separation of the judicial from administrative business in most of the American states has led to some variation in different states in dividing the duties of the former clerk of sessions, and in the terminology of the office.

In many states the duties of court clerk and secretary to the county board are combined in one official, who often has other duties not covered by either of his two main functions. A clerk is chosen for each county even where the judicial district includes more than one county. In rather more than half of the states, the title of clerk of the court is used for this officer; and in some of these states his duties are confined to those of a court clerk. In a few cases court clerks have different titles. In Pennsylvania and Delaware, the clerk of the common pleas court is called a prothonotary; and in these states there are sometimes special clerks for other courts. In Massachusetts and Maine, the clerks of the probate courts are known as registers of probate. Sometimes there are separate clerks for the circuit and county courts; and in Mississippi each county has a clerk of the circuit court and a clerk of the chancery court.

In rather less than half of the states the office of county clerk has been established, this officer usually acting as a clerk of courts, but having also other duties. In a few scattered states there is a county clerk and also a clerk of courts, the former having no duties in relation to the courts; while in Ohio, Minnesota and Iowa the county auditor acts as clerk of the county board, and the clerk of courts is simply an officer of the courts.

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[90] *Barnes' W. Va. Code Ann.*, 1923, p. 2789.

With very few exceptions, county clerks and court clerks are elective for short terms, most often for two years, but in some cases for four years, and in one or two instances for a longer period.[91] In New Hampshire, Vermont, and Connecticut they are appointed by the judges and hold during the pleasure of the appointing power. In Rhode Island, the clerks of the courts are elected annually by the general assembly. As the duties of the office are in no sense political, there seems no good reason for making it elective, and more efficient service would be secured if the tenure were indefinite, subject to removal by the appointing power.

As court clerks these officers open and adjourn each session of the court, keep the minutes of the proceedings and orders, and have custody of the records and seals. They docket all cases for trial, filing together all papers in each case. They issue proper processes or writs at the beginning, during, and at the end of each suit, and also enter judgments rendered by the court. They certify to the correctness of transcripts from the records of the court, and preserve the property and money in the custody of the court. Their duties are for the most part purely ministerial; but some functions imposed by statute, such as the assessment of costs, the approval of bonds, and the assessment of damages in cases of default, are quasi-judicial. A court may not, however, delegate any of its judicial functions to its clerk.

JUSTICES OF THE PEACE AND CONSTABLES[92]

Justices of the peace and constables are usually chosen for and function in towns, townships and local districts within the county. But they constitute the primary agencies of judicial administration in the county, their jurisdiction usually extends throughout the county, and in some states justices of the peace have been held to be county officers. A brief account of the more general aspects of these offices may therefore be given here, though further consideration will be given in later chapters.

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[91] Massachusetts, five years; Maryland, six years; Virginia, eight years.

[92] 12 *Corpus Juris,* 448; ''The Passing of the Justice of the Peace,'' 12 (n. s.) *Va. Law Reg.,* 110 (1926); Chester H. Smith, ''The Justice of Peace System in the United States,'' 15 *Calif. Law Rev.,* 118-141 (1927); A. B. Butts, ''The Justice of the Peace—Recent Tendencies,'' 22 *Amer. Pol. Sci. Rev.,* 946-953 (1928).

All of the forty-eight states have justices of the peace; and the office is at least recognized in all the state constitutions except that of California, and is definitely required in most of them. Six state constitutions authorize or permit the abolition of the office; and thirteen others provide that a competent number of justices shall be appointed or elected. Half of the state constitutions (mostly in the South and West) define or limit the jurisdiction of justices of the peace; elsewhere this may be defined by the legislature.

In most of the states justices of the peace are elected for short terms by towns, townships or districts; but in several New England and Southern states they are appointed. They are not required to have any legal training, and seldom have any, except in cities and larger villages; nor do they often have much education of any kind. In most states they are paid by fees. Sometimes these have been paid only if the defendant is convicted; but the Supreme Court of the United States has held in a recent case that a judge is disqualified under these circumstances, on grounds of personal interest.[93] A few states have abolished the fee system and placed the office on a salary basis. In several states justices' courts are classed as courts of record. But elsewhere they are not courts of record, although dockets showing cases brought before them are often required. Usually records are very inadequate or do not exist.

The jurisdiction of justices of the peace covers minor criminal and civil cases. In criminal cases they have authority to issue warrants for arrest, to try misdemeanors punishable by small fines and short terms of imprisonment, and to commit those charged with more serious crimes for trial before a higher court. In civil actions, they can try cases in contract and tort, involving small amounts—in most states not more than $100 to $300. In some of the New England states the ordinary justices are little more than committing magistrates and have no power to try cases; but trial justices are appointed for larger districts.

Justices of the peace are also authorized to perform marriages and to attest formal documents. In several Southern states (Kentucky, Tennessee, and Arkansas) they constitute the county court, which acts as the administrative board for county affairs. In states where there are no towns or townships, justices of the peace sometimes serve as overseers of the poor and in other capacities. In

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[93] *Tunney v. Ohio,* 273 U. S. 510 (1927).

New York, Michigan, and Illinois they are members of the town boards.

A constable is a local peace officer "whose duties are similar to those of the sheriff, though his powers are less and his jurisdiction smaller. He is to preserve the public peace, execute the process of magistrates' courts, and of some other tribunals, serve writs, attend the sessions of the criminal courts, have the custody of juries, and discharge other functions sometimes assigned to him by local law or statute." [94] Thus as the sheriff is the law enforcement officer of the county, the constable occupies this position in the township, precinct, district, or other subdivision of the county. Corresponding to the duties of the sheriff in executing the writs of the higher courts, the constables execute the writs of justices of the peace and other inferior courts.

Constables are usually elected in towns, townships, precincts or districts; but a few states (Maryland, Delaware, and South Carolina) provide for their appointment by the county board or justices. In most states the courts have held that they may perform duties in any part of the county; but in Georgia and Mississippi they may not sell property or serve process outside of their districts.[95]

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[94] *Black's Law Dictionary* (2nd ed.), p. 253.

[95] *Divine v. Bailey,* 62 Ga. 235 (1879); *Boutwell v. Grayson,* 118 Miss. 80, 79 So. (Miss.) 61 (1918).

CHAPTER IX

FINANCE AND OTHER COUNTY OFFICERS

In addition to the county officers hitherto considered, there are in nearly all states a considerable and varying number of other elective and appointive county officials. These are not definitely organized under any chief executive or administrative officer; nor is there any effective organization of officials dealing with different phases of the same general function; and in different states there is a varying distribution of work to officials with the same title. These officials may, however, be considered in several groups, each dealing with somewhat related matters.

Thus there are several officials whose duties are largely clerical and recording, as county clerks and recorders of deeds. Another group have to do with financial problems, including assessors, collectors, treasurers, and auditors. These are in most cases elective officials, as are also the county school officers and surveyors. Other public officials, who are usually appointive, look after roads and other public works, poor relief, and sometimes other matters.

FINANCE OFFICERS

County Assessors.—For the administration of the general property tax, which is the principal source of revenue for county and other local purposes, and often for an important part of the state income, there are officers, usually called assessors, who prepare lists of property for taxation and determine the valuations on which taxes will be levied. In the Southern and Western states these assessors have regularly been county officers; while in the other states. with active town or township governments, the primary assessments have been made by town or township (or in some cases city) officers. But in many states there are now both town and county assessing officers, and also a state authority with some power to equalize or review local assessments and to make assessments for some classes of property.

The New England states and most of the states in the Middle

Atlantic and North Central groups [1] still use the town or township system of assessment, but in many cases there is also a county authority with power to equalize or revise the original assessments. In Illinois there are county boards of review, as well as town assessors in most counties; but in some counties assessment is a county function. In Indiana and South Dakota there are both county and township assessors. In Missouri and Nebraska some counties have township assessors; but in most counties local assessments are made by county officers, as is now the general system in Ohio and Kansas.

In the Southern states there are also a number of exceptions and modifications of the system of county assessment. In North and South Carolina and most of the Tennessee counties there are township or district assessors. In North Carolina, township assessors are appointed by the board of county commissioners, and there is also a county assessor, who must be a freeholder in the county for which he acts, appointed by the state tax commission, and serves for four years. It is his duty to supervise the township assessors and to instruct them as to their duties.[2] In South Carolina, township assessors are appointed by the governor for a two-year period.[3] In Louisiana, an assessor for each parish is appointed by the governor.[4] In Arkansas, in addition to the elected county assessor, there are township boards of assessment and valuation, composed of the county assessor and two property owners of each township appointed by the county judge.[5]

In California there are city assessors, who make a separate valuation of property for taxation, distinct from the assessment by county assessors for county and state taxes.

Usually officers who have direct charge of original assessments are known as assessors; but in Virginia they are called commissioners of revenue,[6] in Georgia tax receivers,[7] and in Kentucky tax commissioners.[8] Their term is usually two years in the Western states; and in the Southern states two and four year terms are about equally common.

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[1] Connecticut, Delaware, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, New York, Rhode Island, and Vermont. Martin Saxe, "A Plea for the County Plan of Tax Administration in New York," *Proceedings of the Second Conference for Better County Government in New York State,* 1916, pp. 16-24.

[2] Charles Lee Raper, "The County Tax List and Its Equalization," *County Government and County Affairs in North Carolina* (1918), pp. 51-52.

[3] *Code of Laws of S. C.*, 1922, vol. 3, sec. 469.

[4] *Const. and Stat. of La.*, 1920, vol. 3, p. 1931.

[5] *Digest of Stat. of Ark.*, 1921, sec. 9887.

Where the work of original assessments is concentrated in a county officer, there is need for a staff of assistants. In Ohio the county auditor, who is also county assessor, is authorized to appoint and employ such experts, deputies and clerks or other employees as may be necessary to the performance of his duties as assessor.[9] In West Virginia[10] and Kansas,[11] the elective county assessor appoints deputies with the consent of the county board.

Assessment of property for taxation is a difficult task, requiring a high degree of expert ability; and a method of selecting assessors should be used which offers some provision for securing competent and qualified men. At the same time, the work offers unusual opportunities for favoritism and thus calls for men of undoubted honesty and integrity.

Towns and other subdivisions of the county seem to be clearly too small areas in which to secure competent assessors; and the county should be the standard area for local assessments. It is significant that in Illinois the routine and mechanical work of preparing lists of real estate and extending the taxes is placed in the hands of county officers, while the more difficult task of determining values continues to be entrusted to town officials.

As has been said, election tends to secure men who have more ability to secure votes than to value property accurately and fairly.[12] At the same time, unrestricted power of appointment opens the door to political favoritism. In Louisiana and South Carolina assessors are appointed by the governor. Ohio in 1913 provided for the appointment by the governor of assessors for large districts; but opposition to this highly centralized method led to its repeal two years later, and the method of local election was revived.[13] In North Carolina county assessors are appointed by the state tax commission; this method is preferable to appointment by the governor. But in most states it is probable that this would meet strong opposition.

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[6] *Va. Code,* 1924, ch. 96.

[7] *Ga. Code,* 1926, sec. 1197.

[8] *Carroll's Ky. Stat.,* 1922, secs. 4042a-1, 4042a-15.

[9] *Page's Ohio Gen. Code,* vol. 1, sec. 5367.

[10] *Barnes' W. Va. Code,* 1923, ch. 29, secs. 7-9. See also *Const. of Idaho,* Art. XVIII, sec. 6.

[11] *Rev. Stat. of Kas.,* 1923, sec. 79-1441.

[12] Martin Saxe, *op. cit.,* pp. 17-18.

[13] *Laws of Ohio,* 1913, p. 786; *ibid.,* 1914-15, p. 246.

It has been suggested that some improvement in local assessors might be secured by requiring candidates to qualify, before their names are placed on the ballot, by passing an examination.[14] This would somewhat resemble the requirements now made in some states for county school superintendents.

Kentucky has adopted a plan of this kind. The office of county assessor has been abolished and replaced by the county tax commissioner. Before any person's name may be placed upon the ballot as a candidate for tax commissioner, he must hold a certificate from the state tax commission that he has been examined by them and that he is qualified for the office. The questions must be on "the applicant's experience as an assessor, his knowledge of the revenue laws, his knowledge of the geography of the county in which he expects to become a candidate, his knowledge of the industries and property of such county, and his elementary training and business experience to fill the office."[15]

In Baltimore and New York City subordinate assessors are now tested by examination as to their fitness for the position before they are appointed[16]; and this method should be generally applied to deputies and assistants.

Another plan which may be suggested is similar to that used in Illinois for the selection of county road supervisors. County boards might be authorized to nominate candidates for county assessors, and from those who pass examinations held by the state tax commission, to appoint the assessors. This combines the method of local selection with some evidence of ability; and at the same time it eliminates the difficulties of popular election.

The powers and duties of tax assessors are prescribed by statute, and thus differ in detail in the various states. But the main features of their official actions are similar. They must prepare a list of persons subject to taxation, with a description and valuation of their property, classified usually as real estate and personal property. On the valuations found the taxes are determined at the rate levied by simple arithmetical calculation. In many states taxpayers are required to submit an itemized list of their property for the information of the assessor; but such statements are only evidence for the information of the assessors and do not limit their valuations. In many states the requirements as to the names of persons assessed are merely directions, so that errors do not render the assessment void; this tends to make such assessments, especially for real estate, against the property rather than against the owner.

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[14] H. L. Lutz, *Public Finance* (1925), p. 368.

[15] *Carroll's Ky. Stat.*, 1922, secs. 4042a-1, 4042a-15.

[16] H. L. Lutz, *op. cit.*, p. 368; M. H. Hunter, *Outlines of Public Finance* (1926), p. 274.

Real estate must be described so that each parcel may be identified, and a separate value given to each. Personal property in most states may be valued in gross, but in some the separate items are required to be specified. In fixing values assessors act in a judicial capacity; but administrative appeals are usually provided, and in cases of arbitrary and grossly unequal valuations the courts will sometimes review their decisions.

Sometimes tax assessors perform other functions not directly related to the assessment of taxes. Thus in Virginia the commissioners of revenue collect statistics of births and deaths. In Georgia the tax receiver compiles a register of children of school age and statistics of agriculture and manufactures.[17]

County Treasurer.—County treasurers are found in all states except Rhode Island. In Alabama the office has been abolished in all counties having less than 55,000 population, and all moneys are paid into a national or state bank as the board of revenue or the court of county commissioners designates. All settlements which were formerly made with the county treasurer in such county are now made with the board of revenue or court of county commissioners.[18] Other officers in some cases act ex officio as county treasurer.[19] In Tennessee the collector and treasurer is called the trustee; and in New Jersey the collector also serves as treasurer.

County treasurers are usually elected, but in some states they are appointed. In Connecticut they are appointed by the county commissioners; in Vermont by the county court[20]; in New Jersey by the board of chosen freeholders[21]; and in South Carolina by the governor and senate.[22] Parish treasurers in Louisiana are appointed by the police juries.[23] An interesting method of selecting county treasurers is provided in Kentucky.[24] They are appointed by the fiscal court; but the court must advertise in newspapers the fact that it will elect a county treasurer on a certain date and that bids will be received. Sealed bids setting out the terms and conditions under which they will accept such appointment are then submitted. On the date provided the bids are opened and the board elects as treasurer that person whose bid is regarded as being the "lowest and best bid," provided the applicant fulfils the statutory requirements of age and residence.

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[17] The work of county boards of equalization and review will be considered in Chapter XVIII.

[18] *Code of Ala.*, 1923, vol. 1, secs. 312-24.

[19] *Barnes' W. Va. Code*, 1923, p. 463.

[20] *Gen. Stat. of Conn., Rev. of 1918*, vol. 1, sec. 190; *Gen. Laws of Vt.*, 1917, sec. 3880.

[21] *Comp. Stat. of N. J.*, 1709-1910, vol. 1, p. 507, sec. 123.

The term of county treasurer is usually two years, even in some states where the other county officers are chosen for four years; but in a few Southern states the treasurer serves for four years. Moreover, limitations are found in several states upon the right of the treasurer to succeed himself. Thus he may not serve more than four years in any six, or he may not serve more than two consecutive terms,[25] or he may not immediately succeed himself.[26] The object of these provisions seems to be to insure an exact examination of county funds on the transfer of the office from one officer to another. It seems, however, to be a primitive and unsatisfactory method by which to check up on the accounts of an officer. It has also meant that the person who holds this office is usually inexperienced and when he has learned the duties and procedure of his office, he must give way to another, because the constitution or statutes of the state forbid his serving longer. With improved methods of audit, and with the introduction of state supervision of accounting and reporting, and the audit of accounts of county officers by state authority, it seems that it is no longer necessary to continue this provision forbidding the county treasurer to succeed himself.

Treasurers are regularly placed under heavy bonds to protect the county in case of defalcations, which, unfortunately, have been more frequent among these elective local officers than among the appointive financial agents of the state and national governments. It was formerly the practice for county treasurers to rely upon friends as bondsmen. In many cases, the bank in which county funds were deposited acted as bondsmen for the county treasurer in return for its designation as county depositary. The bond is for the advantage and safety of the county and the treasurer should not be required to secure friends as bondsmen, or to pay for his own bond with a bonding company. Business corporations which place their employees under bond do this for their own safety, and accordingly they themselves pay the premium rather than ask the employee to do it. A similar practice should be followed by the county; as is already done in some states.[27]

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[22] *Code of Laws of S. C.*, 1922, vol. 3, sec. 491.

[23] *Const. and Stat. of La.*, 1920, vol. 2, pp. 1530-33.

[24] *Carroll's Ky. Stat.*, 1922, secs. 928-938.

[25] Indiana, Ohio, Kansas, Montana.

[26] Mississippi, Pennsylvania.

County treasurers in many states receive a salary determined by statute or by the county board. But sometimes they have an additional income from fees and commissions; and in some states they are paid entirely in this way. Moreover, it has been a common practice until recent years, and is still followed in some states, for a county treasurer to reserve for himself the interest received from banks on deposits of county funds. The excuse given for this practice of the county treasurers has been that they assume heavy responsibility for all funds in the treasury. While some courts have held the treasurer liable only where he failed to exercise due care in investigating the condition of the bank, in some cases he has been held absolutely liable for all funds coming into his custody, even though there was no claim of bad faith or lack of reasonable prudence on his part.[28]

According to the Supreme Court of Appeals of Virginia, the weight of argument upon general principles and the preponderance of authority "is in favor of the rule of strict liability, which requires a public official to assume all risks of loss, and imposes upon him the duty to account for the public funds which go into his hands, except in cases where the loss results from the act of God or the public enemy, or possibly from some other overruling necessity." [29] This absolute rule has in many cases resulted in hardships for honest, diligent, and prudent treasurers. The better plan would be for the county board to designate the depositaries and the county to receive the interest from the public funds. Under this procedure the county treasurer would not be held liable for losses through bank failures, unless he deposits funds contrary to the provisions of a depositary law.[30]

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[27] See: *Gen. Stat. of Conn., Rev. of 1918*, sec. 204; *Rev. Stat. of Ariz.*, 1913, sec. 4854.

[28] *State v. Reed*, 95 S.W. (Tenn.) 809 (1906); *Mecklenburg County v. Beales*, 69 S.E. (Va.) 1032 (1911).

[29] *Mecklenburg County v. Beales*, 69 S.E. (Va.) 1032 (1911).

It would also be to the advantage of the county to follow this method of depositing funds, when properly secured, in designated banks, which should pay the interest to the county. In Cook county, Illinois, some years ago the treasurer agreed publicly to pay over such interest and commissions to the county treasury. In 1904 the amount turned over was more than $500,000, while the expenses of the treasurer's office, formerly paid by the treasurer, was $312,000, which left a net addition to the county treasury of nearly $200,000. In Cuyahoga county, Ohio, the net compensation of the county treasurer in 1904 was $23,000.

Laws have now been passed in several states regulating the deposit of county funds and providing the method by which county depositaries shall be selected.[31] The best practice is to provide for the selection of county depositaries by the county board. Bids should be received for the deposit of county funds and banks offering the highest rate of interest should be selected. The safety of the county, however, should be protected by requiring the banks to give, at their own expense, a surety bond, or by limiting the amount that can be deposited in a bank according to its resources. All interest received should go to the county, an adequate salary being provided for the county treasurer, so that he will not need to depend upon this source of income. Under either the salary or the fee system the remuneration of the county treasurer is generally larger than that of any other county officer; and for this reason the position is much sought after by political candidates.

It is the duty of county treasurers to receive and receipt for moneys coming to their respective counties. The largest part of this is in the form of taxes, which may be collected directly from the taxpayers or turned over by county or township collectors. The receipts include much more than county revenues. The county treasurers act as agents of the state treasury for the collection of state taxes; and in some states taxes for townships and other local districts pass through the county treasuries. In some states the county treasurers also collect delinquent taxes. On the other hand, in many cases fees are collected by other county officers from which the expenses of their offices are paid, at least in part, and only any surplus is paid over to the treasurer.

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[30] *State v. McGraw*, 240 Pac. (Mont.) 812 (1925); *Slope v. Douglas*, 194 N.W. (N. D.) 385 (1923); *Hinton v. State*, 156 Pac. (Okla.) 161 (1916).

[31] See for various types of depositary laws: *Kas. Rev. Stat.*, 1923, sec. 19-530; *Laws of S. D.*, 1913, vol. 1, secs. 3315-29; *Fla. Cum. Stat.*, 1925, secs. 1559, 1562; *Supp. to Digest of Stat. of Ark.*, 1927, secs. 1991a-1991n; *Ore. Laws, Supp.* 1921-27, vol. 1, pp. 386-89; *Gen. Stat. of Conn.*, Rev. of 1918, sec. 486.

Money received by county treasurers must be disbursed as provided by law. State taxes are forwarded at stated intervals to the state treasury, and taxes for local districts are paid to their treasurers. Payments for county expenses are made by the county treasurer only on authority of the county board or county auditor. In all cases his powers and duties are determined by the statutes, and he must act in pursuance of the power thus conferred.

The nature of the office of county treasurer is shown by his limited control over disbursements. When the county board has passed upon a claim it is his duty to pay it. ''He is not justified in refusing the payment of any demand for any expenditure which the board of supervisors is authorized to make and which it has allowed and ordered paid.''[32] But if the board directs the payment of an expenditure which it has no power to incur, the treasurer is justified in refusing the payment. According to the Supreme Court of California, it appears that ''it is the duty of the treasurer to examine every claim presented to him for payment, and that the mere fact that the claim has been allowed by the supervisors or approved by the auditor does not of necessity impose upon him the duty to pay it. He is charged with a knowledge of the objects for which the public moneys in his custody may be expended; and if a demand is presented to him which on its face appears to be for a claim not authorized by law, or for an expenditure which was beyond the power of the supervisors to incur, he is required to refuse such payment.'' Thus while he has no right to refuse to pay a claim, which a county board is authorized to audit and allow, where the action of the board was within its jurisdiction, if the board allows a claim not legally chargeable against the county, the county treasurer can lawfully refuse to honor a warrant issued for such a claim.[33]

The county treasurer often holds other positions ex officio, or performs functions other than those noted above. Most commonly he is also collector of taxes. In Illinois counties not under township organization he acts as assessor, and in other counties he is supervisor of assessments.

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[32] *Von Schmidt v. Widbur,* 38 Pac. (Cal.) 682 (1894). Also see and compare: *Friedman v. Horning,* 87 N.W. (Mich.) 752 (1901); *State v. Adams,* 61 S.W. (Mo.) 894 (1901). Cf. Ch. XIX, n. 32.

[33] *State v. Montoya,* 146 Pac. (N. M.) 956 (1915).

Tax Collector.—Another county finance officer is the tax collector. Only a few states provide for county tax collectors; in most states the treasurer or some other county officer collecting county taxes. In Alabama and Georgia the tax collector is elected [34] and in New Jersey he is appointed by the board of chosen freeholders.[35] The sheriff is ex officio tax collector in some states [36]; in others the assessor is ex officio tax collector [37]; but in most states the treasurer acts as tax collector.[38] A collector is elected in Texas counties of over 10,000 population; in counties having a population of less than that number, the sheriff collects the taxes.[39] In California, county boards of supervisors may consolidate the office of tax collector and sheriff or tax collector and treasurer.[40]

The tax collector is purely a ministerial officer; his duties are largely routine and clerical in their nature. The office should be abolished and the duties performed by some other county officer, preferably the county treasurer. The duties of the office come at certain periods and to meet this situation the county treasurer should be authorized to employ additional help. The work does not warrant the election of a separate officer.

Collectors are often paid by fees or commissions, deducted from the taxes collected; and even where there is a fixed salary such commissions are in some states still deducted, and any surplus after paying the salary and other expenses of the collector's office is paid into the county treasury.

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[34] *Code of Ala.*, 1923, vol. 1, secs. 3045-53; *Ga. Code*, 1926, secs. 1204-45.

[35] *Comp. Stat. of N. J.*, 1709-1910, vol. 1, p. 528.

[36] *Const. and Stat. of La.*, 1920, vol. 3, p. 1932; *Digest of Stat. of Ark.*, 1921, sec. 10,026. This is also the method of collection in Illinois counties not under township organization.

[37] *Idaho Comp. Stat.*, 1919, vol. 1, secs. 3267, 3272-73; *Rev. Stat. of Ariz.*, 1913, sec. 4872.

[38] *Const. of Colo.*, Art. XIV, sec. 8; *Const. of Mont.*, Art. XVI, sec. 5; *Rev. Stat. of Ariz.*, 1913, sec. 2503. This is the method of collection in Illinois counties under township organization, and in most states west of the Mississippi.

[39] *Vernon's Texas Stat.*, vol. 20, Arts. 7245-98.

[40] *Pol. Code of Calif.*, 1923, sec. 4017. Cf. M. S. Kendrick, *The Collection of General Property Taxes.*

County Auditor.—Auditors have been established as regular county officers in about one third of the states.[41] They are most common and of most importance in the North Central states; but they are found in some states in each of the other geographical groups. In a few states they are provided for some counties; in Montana they are found in certain classes of counties[42]; in Kansas they are found in all counties having a population of over 45,000[43]; and in Oregon they are found in two counties.[44] In Illinois, the county clerk of Cook county is also comptroller; and there are county auditors in other counties having over 75,000 population.

While auditors are elected in most states, other methods of selection are provided in some cases. In Vermont they are appointed by the judges of the county court[45]; in New Hampshire by the judges of the Supreme Court[46]; in New Jersey counties of the first class, they are appointed by the board of chosen freeholders[47]; in Connecticut, by the senators and representatives from the county in the state legislature[48]; in South Carolina, by the governor and Senate[49]; and in Kansas counties of over 45,000 population, by the district court of the judicial district in which the county is located.[50]

While there is usually one auditor, Michigan provides for boards of county auditors not to exceed three persons in some counties[51]; in Connecticut and New Hampshire there are two auditors[52]; and in Pennsylvania there are three auditors in each county.[53]

In states where county auditors have not been established the county clerk often acts in some respects as audit officer. In Ohio,

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[41] George S. Buck, "The County Auditor," *County Government*, published by the New York State Constitutional Convention Commission (1915).

[42] *Rev. Codes of Mont.*, 1921, vol. 1, secs. 4824-34.

[43] *Rev. Stat. of Kas.*, 1923, 19—601-27.

[44] *Ore. Laws*, 1920, vol. 2, ch. 26.

[45] *Gen. Laws of Vt.*, 1917, sec. 3896.

[46] *Public Stat. of N. H.*, in force 1901, pp. 123-24; *Supp.* 1901-13, p. 41.

[47] *Comp. Stat. of N. J.*, 1709-1910, vol. 1, 528.

[48] *Gen. Stat. of Conn.*, Rev. of 1918, sec. 199.

[49] *Code of Laws of S. C.*, 1922, vol. 3, secs. 433-35.

[50] *Rev. Stat. of Kas.*, 1923, 19–601-27.

[51] *Comp. Laws of Mich.*, 1915, vol. 1, sec. 2345.

[52] *Public Stat. of N. H.*, in force 1901, pp. 123-24; *Supp. to Public Stat. of N. H.*, 1901-13, p. 41; *Gen. Stat. of Conn.*, Rev. of 1918, sec. 199.

[53] *Const. of Pa.*, Art. XIV, sec. 7; *Pa. Stat. Complete to 1920*, secs. 7305, 7333.

Iowa, and Minnesota the county auditor acts as clerk of the county board. In Florida the recorder is ex officio auditor [54]; in Idaho the clerk of the district court is ex officio auditor and recorder of the county [55]; and in Mississippi the clerk of the board of supervisors is county auditor.[56]

County auditors are paid sometimes at a per diem rate, sometimes by fees, and sometimes a fixed salary.

With the increasing importance of county finances there is a growing need for more efficient methods of accounting. Popular election, however, does not seem to be the proper method to secure a competent officer for this work. The auditor is clearly a ministerial officer with only the powers conferred upon him by the statute [57]; he "is not the agent of the county, having, as such, any authority not delegated to him by the statute." [58] When the nature of his duties are considered it seems evident that appointment is to be preferred to popular election. This should be vested in the county board, subject to the approval of a state authority.[59]

The primary function of the county auditor, where this officer is found, is the examination and approval of bills and other claims against the county before payment. This is usually a preliminary step to presentation before the county board, which makes the order for payment [60]; and something of this kind is also done by the county clerk where there is no county auditor. The auditor or clerk may also take part in the preparation of the appropriations or budget. But where the county board acts on all claims, the appropriation is not an effective limit on expenditures, as an order of the county board for payment has much the same effect as a modification of the appropriation. If claims approved by the auditor and within the appropriations were paid without action by the county board, which is likely to be a formal matter, and only those claims which exceeded the appropriations were formally presented to the board more attention would be called to them, and action by the county board in such cases might well require more than a majority vote.

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[54] *Const. of Fla.*, Art. V, sec. 15.

[55] *Const. of Idaho*, Art. XVIII, sec. 6.

[56] *Hemingway's Miss. Code*, 1927, vol. 2, sec. 4026.

[57] *State v. Allen*, 99 N.E. (Ohio) 312 (1912); *Howley v. Scott*, 143 N.W. (Minn.) 257 (1913).

[58] *Patton v. Cass County*, 102 N.W. (N. D.) 174 (1904).

[59] See Chapter XVIII.

[60] For example see *Rev. Stat. of Kas.*, 1923, ch. 19, Art. 6.

In most counties, there seems little need for both a county auditor and a county clerk, though the title auditor may serve to emphasize his responsibility for passing on the validity of claims; and his authority in this respect may be more clearly expressed in the statutes. In more populous counties, there is need for a distinct organization of the financial work; but even in Cook county, Illinois, the county clerk is ex officio comptroller, with a special staff for this work, which appears to be more effectively done than in other Illinois counties with a county auditor.

In some cases county auditors also have authority to examine accounts of other county officers. But often there is no systematic examination and audit of county financial accounts as a whole at regular periods. In some cases such audits are made, occasionally or regularly, by accountants employed by the county boards; but these necessarily vary in their methods and results. A number of states have provided for state supervision and audit of local accounts; and it has been suggested that with a state examiner to investigate and criticize county finances, the office of county auditor be abolished.[61] There is need for a regular system of auditing county accounts under state supervision; but this will not do away with the need for a county officer charged with preliminary examination of claims against the county before payment.

CLERICAL OFFICERS

County Clerk.—In about one half of the states there has been established the office of county clerk. As has been pointed out in the preceding chapter this office is in some cases combined with that of the clerk of the courts. In a few states there is both a county clerk and also a clerk of courts, the former having no duty in relation to courts; and in Ohio, Iowa, and Minnesota the county auditor acts as clerk of the county board, and the clerk of the courts is simply an officer of the courts.[62]

County clerks are usually elected. In Vermont, however, they are appointed by the assistant judges of the county court with the concurrence of the presiding judge of the court. They serve in that state for an indefinite tenure. In Ohio, where the county auditor serves as clerk of the county board, if the board finds it necessary for the clerk to devote his entire time to the duties of this position it may appoint a clerk to serve in this capacity.[63]

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[61] 2 *Nat. Mun. Rev. Supp.*, p. 4 (1913).

[62] *Page's Ohio Gen. Code*, vol. 1, sec. 2409; *Mason's Minn. Stat.*, 1927, vol. 1, sec. 832; *Code of Ia.*, 1927, sec. 5141.

Deputies are often provided for county clerks; in some cases deputies are provided only for the more populous counties. They are sometimes selected by the county board; sometimes by the clerk subject to the approval of the county board; and in Michigan they must be approved by the circuit judge.[64]

The county clerk is secretary to the county board and keeps a record of its proceedings. It is his duty to record in a book provided for that purpose all proceedings of the board and to make regular entries of their resolutions and decisions on questions which come before them. This is sometimes done by the court clerks. In Kentucky the clerk of the county court is ex officio clerk of the fiscal court. He attends its sessions and keeps a "full and complete record of all its proceedings, with a proper index."[65] For his services the fiscal court must annually make him a reasonable allowance.

Where there is no county auditor, the county clerk acts in some degree in that capacity. Bills against the county are presented to him; he examines the claims and prepares them for approval by the county board. His work in this connection is largely routine and ministerial.

The county clerk usually has important duties under the primary and election laws. He prepares both the sample and official ballots and distributes them to the precinct election officers. The returns in the various precincts are transmitted to him for submission to the county canvassing authority. Returns for state and district officers are then sent to the proper authority, this usually being done by the county clerk. In some states he has other duties in connection with elections. In Montana, he is ex officio county registrar of voters. In Michigan, Wisconsin, Colorado, and Wyoming, he is a member of the county board of canvassers.

Various other duties are performed by the county clerk. In several states he issues hunters' and marriage licenses. In Wisconsin and West Virginia, he is clerk of the board of review[66]; and in Kansas and Oklahoma, he assesses property which the assessor has failed to assess.[67] He is often required to make reports relative to certain matters to state officers, such as vacancies in county offices which are to be filled by state authority; a clear and concise statement of the financial condition of the county in Kansas and Oklahoma; and various things in other states.

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[63] *Page's Ohio Gen. Code*, vol. 1, sec. 2409.

[64] *Comp. Laws of Mich.*, 1915, vol. 1, sec. 2433.

[65] *Carroll's Ky. Stat.*, 1922, sec. 1835.

[66] *Wis. Stat.*, 1927, vol. 1, sec. 71.13; *Barnes' W. Va. Code*, 1923, p. 408.

In some states the county clerk is tending to become the de facto chief executive officer of the county, as his numerous functions bring him into official contact with all branches of county administration. Since he is not a policy determining officer there seems to be no reason why he should be popularly elected. He is the agent of the county board primarily, and appointment by it would be more satisfactory than popular election. This would not only tend to shorten the ballot but would probably secure a more satisfactory type of officer.[68]

Registers of Deeds.—In all of the states a public record is kept of documents affecting title to real estate, and in about half of them this record is in charge of a special elective county official, known as the register or recorder of deeds. In other states the land records are kept by county clerks, court clerks, or county auditors, except in Connecticut, Vermont, and Rhode Island, where the town clerks act as recorders.

This system of public land records has developed in America. At common law in England there was no obligation to record publicly conveyances affecting title to land. After the Statute of Uses,[69] which authorized the transfer of estates by deed without actual delivery of possession, there was passed the Statute of Enrollments,[70] for the registry of bargains and sales. But this measure was evaded; and while several recording acts were passed for local districts in England early in the eighteenth century,[71] no general system was established in that country until 1875. The ownership of land so generally in large estates and the infrequency of transfers renders public records less necessary, while the land owners oppose a registration system from a dislike to publishing the details of family settlements and domestic arrangements.[72]

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[67] *Rev. Stat. of Kas.*, 1923, sec. 19-314; *Comp. Okla. Stat.*, 1921, vol. 2, sec. 5769.

[68] Wisconsin provides for his removal by a two thirds vote of the county board. *Wis. Stat.*, 1927, vol. 1, ch. 17.09.

[69] 27 Henry VII, ch. 10.

[70] 27 Henry VIII, ch. 16.

[71] Yorkshire Acts, 5 Anne, ch. 18; 6 Anne, ch. 35; 8 George II, ch. 6. The Middlesex Registry Act, 7 Anne, ch. 20.

In America, however, land registration was introduced in New England with the early settlements[73]; and the system was well established in many colonies before the first of the English local acts.[74] Before the Revolution public land registers were almost universal in all of the colonies.[75] Such a system was more necessary in this country on account of the mobility of population and the frequent transfers of land, so as to safeguard purchasers against previous alienation or encumbrances. Everywhere in the United States these public records are now the basis for land titles and conveyancing, and the old ''livery of seisin'' has disappeared.

As the practice of recording is regulated entirely by statute, there is some variety in the instruments required to be recorded in different states. An early Massachusetts act provided that ''no mortgage, bargain, sale or grant made of any houses, lands, rents, or other hereditaments, shall be of force against any other person except the grantor and his heirs, unless the same be recorded.''[76] It is now the definite policy in most states that the title to all interests in land shall be apparent on the records; and practically all documents affecting title to real estate must be recorded to be valid against an innocent third party. This includes warranty and quit-claim deeds of sale, mortgages and satisfaction of mortgages, notices of liens, easements, and other instruments.

Some documents of importance in determining land titles are recorded in other places than the county recorders' offices. The record in a United States land office of the original patent to land in the public land states is sufficient to establish title. The record of unpaid taxes, judgments and legacies are to be found in the treasurers', court and probate offices.

Instruments recorded take effect from the time of filing in the recorder's office and the date and hour of filing are noted in case of conflict between different documents. The records are exact copies of the documents entered in large bound volumes, which form a bulky collection, especially in counties containing cities where there are many transfers of small parcels of land.[77] The records are made in ink, and are usually written in long hand, but sometimes blank forms for documents of the same character are printed in the record books. In many states separate books of record are required for different classes of instruments.

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[72] Webb, *Record of Title,* pp. 17-20.

[73] C. D. Wright, *Public Records of Massachusetts,* p. 370.

[74] Plymouth, 1636; Massachusetts, 1640; Connecticut, 1639; New Jersey, 1676; and Virginia.

[75] Pennsylvania, North Carolina and Maryland, 1715; Georgia, 1755.

[76] *Massachusetts Records,* I, 306, 307 (1640).

Usually recorders are required to prepare indexes of the land records, but the statutes vary as to the details prescribed. In Michigan indexes show only the parties to the instruments. In Illinois abstract books are prepared summarizing the records for tracts of land. But at best the task of searching the records to verify the title to any parcel of land is tedious and expensive. Moreover, as the recorded documents establish only a presumptive title and are not conclusive evidence, those relying on them take the risk of defects being disclosed at a later time.

To avoid the expense and delay of repeated examinations of the records for each purchase or mortgage, and to escape the uncertainty of the results, there have developed abstract and title guaranty companies. Moreover, as a result of much discussion, there has been established in several states a system of public registration of land titles, known as the ''Torrens system.'' [78] This provides for an official examination of the recorded instruments and an investigation of titles by the recorders, and the issuance of certificates of title by a court, while subsequent transactions affecting land so certified must be duly entered on the new registry of titles. This important extension of the recording system has been introduced in Massachusetts, Illinois, Minnesota, Nebraska, Colorado, Oregon, and California; but many years will elapse before it covers most of the real estate even in these states.[79]

In some states the recorders keep other records than those in reference to land titles. Thus in Indiana they record certificates of incorporation, articles of association, articles of apprenticeship, certificates of dentists, descriptions of fence-marks, and of earmarks and brands of live stock; and they also preserve a file of county newspapers. In Wisconsin they keep a record of vital statistics, and in Minnesota a record of trade-marks and brands.

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[77] In Suffolk County, Mass., there were nearly 2,000 volumes in 1890, and 60 volumes were added each year. Cook County, Ills., had 4,200 volumes from 1871-94.

[78] From Robert Torrens, who secured the adoption of a system of land registration in Australia, from where the idea has spread to England, Canada, and the United States. In parts of Continental Europe a similar system has been in use for centuries.

[79] J. H. Brewster, *Conveyancing*, ch. 29; Leonard A. Jones, ''Land Title Registration in the United States,'' 36 *American Law Rev.*, 321 (1902); Arnold Z. Cameron, *The Torrens System* (1915).

The office of recorder is clearly an important one. The protection of property rights is in large measure dependent on the accuracy and honesty of the records, but the duties can hardly be considered political or such as to make necessary the present system of popular election to the position. Indeed, by promoting frequent changes in personnel, the elective method prevents the development of the most efficient expert service.

County Surveyors.—County surveyors are provided in nearly all of the states. Exceptions are the six New England states, New York, New Jersey, and Delaware. The office is usually elective, but in Virginia, Tennessee, and Alabama it is filled by the county boards. Surveyors are usually paid by fees, including states where other county officers are given fixed salaries.

These officers make surveys of lands, but only in special cases, on the order of a court or the application of private owners; and these duties are now of minor importance. In some states, however, surveyors have other duties in connection with establishing and building county roads, and in Indiana they have charge of drainage ditches.

In a new state where there are many disputes as to land boundaries there may be some justification for the office of county surveyor; but property lines are now becoming fixed and the duties of this office are consequently of less importance. With the development in several states of a system of county highway administration, there is need for a county engineer or county superintendent of highways. Some states now combine the duties of surveyor and road officer; and this seems to be the most satisfactory method of meeting the situation.[80]

OTHER COUNTY OFFICERS

In addition to the county officers considered in this and the two preceding chapters, other county officials are provided in many states, and still others in some states or in particular counties. These officers will be considered in later chapters in connection with the functions they perform, or the services in which they are engaged. Thus, school officers will be noted in the chapter on school administration, highway officers in the chapter on highway administration, officers engaged in charity and correctional work in the chapter on charities and corrections, and some others in the chapter on county functions. In these cases it has seemed more satisfactory to consider the officer in connection with the work performed.

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[80] See Chapter XVII on Highway Administration.

The total number of persons classed as county officials in the United States census of occupations for 1920 was 22,092; in 1910 the number was 19,044. The number of state officials was 9,126 in 1920 and 7,202 in 1910. The number of city officials was 33,505 in 1920 and 33,210 in 1910. There were more than twice as many county officials as state officials; but half as many more city officials than county officials. In about half of the states, the number of county officials is larger than the number of city officials.

Texas had the largest number of county officials, 1,640 in 1920, an average of six for each county. This was a little below the average of seven for the country as a whole. California had 1,232 county officials in 1920, an average of nearly twenty-one for each county; Illinois had 1,167, an average of eleven; Ohio had 1,115, an average of twelve; Iowa had 1,028, an average of ten; and Pennsylvania had 970, an average of fourteen.

The smallest number of county officials are in the New England states and in Delaware and Nevada. Only two of these states had more than 100 county officials—Maine with 109 and Massachusetts with 207. In four of the New England states the number of county officials was less than the number of state officials.[81]

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[81] See table of Public Officials, p. 202.

CHAPTER X

COUNTY POLITICS AND ELECTIONS

POLITICAL IMPORTANCE OF THE COUNTY

The county is an important unit in the conduct of elections and in the organization and work of political parties. In nearly every state the county is an area for the election of a number of county officers, who are usually chosen at the same time as the general state and national elections, and for the most part on national party lines. In many states the county is a unit of representation in the state legislature. These conditions tend to make the county the chief local area in campaign activities, not only for the local officials, but also for state and national elections. Important county officials and leaders in the county party organization are likely to have a good deal of influence in the primaries and conventions for the nomination of congressmen and state officers and the selection of delegates to the national conventions. County offices are useful steps up the ladder of political progress, and success in these positions may lead to more important posts in the state and national government. Moreover, the election of administrative officials and the absence of satisfactory methods of filling appointive posts in the county service open the way to patronage and spoils, and makes the county an important division of the party machine.[1]

The importance of the county, however, varies in the different sections of the country. It has been pointed out that it is stronger in the Middle and Western states than in either New England or the South.[2] In New England, where the county is "little more than a formal division of government," the county organization, or "ring," of the Middle West is "known only by report." In the Central and Western states, however, the county is more important in party organization; "the relations of the county and town in politics are almost the opposite of those in New England.'' While the county has developed as the ''chief agency of local government'' in the South, it has ''never been so well organized for political purposes as in the North.'' But there are exceptions to any general statement relative to the importance of the county in politics; and in any section or state it will usually be found to be more important in urban counties than in those having a rural population.

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[1] C. E. Merriam, *The American Party System* (1926), pp. 85-87.

[2] Chester Lloyd Jones, "The County in Politics," 47 *Annals of Amer. Acad. of Pol. & Soc. Sci.*, 85-100 (1913). Cf. Jesse Macy, *Party Organization and Machinery* (1904), pp. 141-42, 201-2, 205-7.

In considering the county as an area of political activity attention may be given first to the machinery of party organization, and then to the agencies for conducting elections, and special forms of political action.

PRECINCT ORGANIZATION

At the base of the system of party organization and the conduct of elections is the precinct or polling district. In most states the formation and alteration of such districts is regulated to some extent by state law; but they are definitely established by the local authorities. In most states precincts for general elections are usually established by the county board or special election authorities. Rural townships often form a single election district, but larger towns and cities are divided into precincts according to the number of voters. Sometimes a distinct set of precincts is formed for elections in cities and in school and other local districts by the officials of these districts.

A party organization is usually provided in every precinct by the major parties. Where the party is in a hopeless minority in the precinct no organization may be provided. And the precinct organization in urban areas is usually more important than in the rural districts.

In most states precinct committeemen are elected at the primary. The precinct executive has been referred to as the ''unit cell'' of party structure,[3] and as the most vital unit in the party machine. ''He is the bone and sinew of the machine. He is its foundation and the real source of its strength. If he does not function, the machine decays. If he quits, the machine dies.''[4] Twenty-five states now provide by law for the election of such a precinct party executive. In a number of other states party rules provide for such a position, usually filled by primary election, but in some cases by appointment by the ward or district leader.

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[3] C. E. Merriam, *op. cit.*, p. 68.

[4] F. R. Kent, *The Great Game of Politics* (1924), p. 1.

While there is usually a single committeeman for each precinct, some states provide for two or more persons. In New Jersey, Colorado, and some other states there are two committeemen, a man and a woman. In Indiana there is a precinct committee, composed of the precinct committeeman, the precinct vice-committeeman and such other persons as may be designated and appointed by the county chairman. In Arizona, an additional committeeman must be elected for each seventy-five voters.[5] Precinct committees are more common in states where the composition is determined by party rules. Thus the Democratic precinct committee in Connecticut has three members, and in Oklahoma seven members, and the Republican precinct committee in North Carolina has three members.[6] But even where the committee form is used one man is likely to be in actual charge.

The work of the precinct party organization depends upon the party strength, and upon the needs and the customs of the particular precinct. Among its duties are ''assisting aliens to procure naturalization papers, registration and enrollment, conducting campaigns, getting out the party vote at all primaries and elections, providing watchers, nominating polling clerks and other election officials, watching the count, and hurrying reports of the results to headquarters.''[7]

Above the precinct committees are ward committees in the case of cities, or township committees for more populous townships containing several precincts. Where found, the township or ward committees are usually composed of the committeemen from the precincts. In the cities there is often a city committee.

COUNTY ORGANIZATION

Next in the hierarchy of political party organization is the county committee. This committee has been referred to as ''a particularly vigorous center of political activity'' and as one of the ''really important'' committees of the party organization. The methods used to select this organ of party control show great variation. State law in half the states provides that it be composed of the precinct committeemen; and in thirteen states which permit the parties to determine how it shall be selected, it is made up in a similar manner. In other states, members separate and distinct from the precinct committeemen are selected to serve on the county committee.[8]

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[5] *Burns' Ann. Ind. Stat.*, 1926, vol. 2, sec. 7781; *Rev. Stat. Ariz.*, 1913, sec. 3044.

[6] E. M. Sait, *op. cit.*, p. 318.

[7] R. C. Brooks, *Political Parties and Electoral Problems* (1923), p. 147. See chart of party organization, p. 150.

In Ohio the county central committee of a party is composed of one member from each precinct or of one member from each ward and township in the county, as the outgoing committee may determine. They are elected by direct vote of the members of the party. The county committee in Indiana is composed of the precinct committeemen and the precinct vice-committeemen who are selected in the precincts within the county. In North Dakota the county committee is composed of the precinct committeemen of the party and a committeeman at large who is selected by the legislative nominees of the party residing in the county.[9] County committees in New York, New Jersey, California, and Idaho are separate and distinct from the precinct committeemen.[10]

In six states the county committee is selected by the county convention of the party[11]; in Michigan and Vermont by the nominees for county offices; in Maine by the state convention of the party; and in New Hampshire by the party nominees and county delegates in the state convention.[12]

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[8] E. M. Sait, *op. cit.*, p. 322. As described by Ostrogorski, at the close of the nineteenth century, before the development of primary election laws, the county committee "rules over the local organizations with powers which are sometimes despotic. Generally, it frames its own rules and by-laws, and makes, at its good will and pleasure, those of the Organizations over which it presides. Among other things it fixes the qualifications for voting at the primaries, and it can make them difficult enough to reduce the number of adherents of the party entitled to vote. The county committee decides without appeal, on all the contests which arise in the Organization. It wields disciplinary powers in it; it can suspend or even turn out, the officers of the associations or of the local committees. Nay more, it can dissolve a whole local Organization, when it encounters opposition in it, or refuse to recognize it as the 'regular' Organization." M. Ostrogorski, *Democracy and the Organization of Political Parties* (1902), II, p. 212.

[9] *Page's Ohio Gen. Code*, vol. 1, sec. 4959 ff.; *Burns' Ann. Ind. Stat.*, 1926, vol. 2, secs. 7381-82. A similar method is used in Arizona. *Rev. Stat. of Ariz.*, 1913, sec. 3044; *Supp. to Comp. Laws North Dakota*, 1913-1925, sec. 890.

[10] *Cahill's Consol. Laws N. Y.*, 1923, ch. 16, secs. 10-12; *Comp. Stat. N. J.*, 1709-1910, vol. 2, p. 2166; *Gen. Laws Calif.*, 1923, Pt. I, Act 2256; *Idaho Comp. Stat.*, 1919, vol. 1, sec. 519. For large cities and urban counties special provisions are made. In the five counties of New York City, and in Chicago, and Boston the central committee consists of members elected at the primary from each assembly district or ward; in Philadelphia of members elected by each ward committee. C. E. Merriam, *op. cit.*, pp. 70-71.

The main functions of the county committee are to organize the local campaign; but the importance of its work varies widely between different sections of the country, between urban and rural counties in the same state, and at different elections. The collection of party funds is largely centralized; but their disbursement is to a considerable extent made through the local organizations.

The chairman of the county committee is ''likely to be an important figure in local affairs, and may wield great influence in party councils.''[13] He is the executive head of the party within the county and is held responsible for the success or failure of his party at the polls. Through his power of public patronage he is often able to build up a powerful party organization in his county; in such case he is able to wield the authority of a ''benevolent despot.'' He acts as the connecting link with the state and national committees, and the local party organizations have in this way been important factors in the development of a strong state party organization. The success of the party in the state will depend upon the degree in which the county and local organizations are able to ''deliver the vote'' on election day.

In a discussion of the contrast between county and city political machines, Frank R. Kent states that there is some basis for the claim that county politics are cleaner and candidates are better than those in the larger cities. One reason for this is that in rural districts, where the population is smaller and people know each other, politics are more personal and closer to the people. Another reason is that the county leaders are generally men of some standing in the community, and do not make their living out of politics. Nevertheless, the county organizations are built on patronage; and while they have to be more careful in choosing candidates, some are as ignorant and depraved as any in the cities. More money is spent proportionately in the counties, because of the greater expense of bringing the voters longer distances to the polls, and because more time has to be given to discussing the issues of the campaign.[14]

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[11] Arkansas, Connecticut, Mississippi, Nebraska, North Carolina, and Rhode Island, E. M. Sait, *op. cit.*, p. 323, n. 3.

[12] *Comp. Laws Mich.*, 1915, vol. 1, sec. 3550ff; *Gen. Laws Vt.*, 1917, sec. 133; *Rev. Stat. Maine*, 1916, p. 129, sec. 2; *Public Laws New Hampshire*, vol. 1, p. 117, sec. 55.

[13] C. E. Merriam, *op. cit.*, p. 68.

COUNTY CONVENTIONS

Before the development of the direct primary county conventions of the different parties were regularly held for the nomination of candidates for county offices and the selection of delegates to larger district and state conventions. But in two-thirds of the states nominations for state and county offices are now required by law to be made at direct primary elections, and in several other states the direct primary is used. County conventions are, however, still held in a few states, and in others county committees exercise some of the functions of former conventions.[15]

In Connecticut, Rhode Island, and New Mexico, conventions, practically unregulated, remain the regular method of making nominations; and in Utah nominations are made by conventions except in first and second class cities.

Iowa provides by law for county conventions, as well as district and state conventions, with some voice in nominations. The county convention is composed of delegates elected at the primary, the number of delegates from each precinct being fixed by the respective county central committees; in case the central committee fails to do this the number is fixed by the county auditor. In case no candidate for nomination for county office received as much as 35 per cent of the primary vote, nomination for the office is made by the county convention. The convention also selects a party candidate where a nomination made in the primary has become vacant or where a vacancy occurred too late to file nomination papers in the primary election. The convention also selects delegates to the state convention.[16]

In thirteen states county conventions choose delegates to state conventions; and in eight other states where state conventions are provided the law is silent as to how they are to be selected.[17] The

[14] Frank R. Kent, *The Great Game of Politics* (1923), ch. 12.

[15] C. E. Merriam and Louise Overacker, *Primary Elections* (1928), pp. 53-59.

[16] *Code of Ia.*, 1927, sec. 616 ff.

[17] County conventions select in Illinois, Iowa, Michigan, Minnesota, Nebraska, Nevada, South Dakota, Washington, Wyoming, Arkansas, Mississippi, South Carolina and Texas. No provision in Colorado, Delaware, Georgia, Kentucky, Maine, Utah, Virginia, and West Virginia. Merriam and Overacker, *op. cit.*, p. 49.

county convention in Idaho, the members of which are elected by the direct primary, selects delegates to the state convention and a member of the state central committee. If the convention so determines, it may adopt also a "county program." In Wyoming the county central committee of each political party must, in May of presidential election years, meet at the county seat and choose delegates to the state convention of the party. Such a meeting is known as the county convention. The county committee in South Carolina must call a county convention every general election year composed of delegates elected from the clubs in the county, in the ratio of one delegate for every twenty-five members, based upon the number of votes polled in the primary of the preceding election year.[18]

COUNTY ELECTION OFFICERS

The county serves as an administrative district for the conduct of state, county and sometimes other elections. Outside of New England, the county board usually is vested with authority to establish election precincts, appoint precinct officers and canvass the returns.[19] But in a number of states provision is made for county boards of elections, registration officers, and canvassing boards.

In some states, as New York, there is a county board of elections appointed by the county supervisors. The board is composed of two members in counties of less than 120,000 population and two to four members in counties above that population, the number being determined by the board of supervisors.[20] Under the Illinois optional election law, adopted in Chicago and several other cities, there is an election board of three commissioners appointed by the county judge. In each county and city of Virginia there is appointed by the circuit court of the county or the corporation court of the city, an electoral board composed of three persons serving for a three-year-period.[21]

[18] *Idaho Comp. Stat.*, 1919, vol. 1, sec. 520; *Wyo. Comp. Stat.*, 1920, sec. 2521; *Code of Laws of S. C.*, 1922, vol. 3, sec. 291.

[19] In New England the local control of general elections is vested in town and city authorities; and in other states city and township officers sometimes act. City, school and other local elections are often conducted by special officers of the particular local authority.

[20] *Cahill's Consol. Laws N. Y.*, 1923, ch. 16, sec. 30. The board of elections of New York City also serves as the board of elections for each county therein.

[21] *Cahill's Ill. Rev. Stat.*, 1927, ch. 46, secs. 75, 240-79; *Const. of Va.*, sec. 31.

Certain county officers may serve ex officio as a county board of elections. The judge of probate, the county clerk, and the county treasurer constitute a board of election commissioners in each county in Michigan. In Alabama the judge of probate, sheriff, and clerk of the circuit court, or a majority of them, act as a supervisory board over county elections. And in Class A counties, and in counties of the first class in Washington, the chairman of the board of county commissioners, the county auditor, and the prosecuting attorney constitute an election board.[22]

County elections in some states are under the control of a board selected in whole or in part by state authority. The power to appoint such local authorities is in some cases placed in the governor; in others in a state board of elections; and in Ohio in a state supervisor of elections.

In New Jersey there is appointed in every county a board of elections composed of four persons. The chairman of the state committee of each of the two political parties which at the last preceding general election cast the largest and next largest number of votes in the state may nominate two citizens in each county for the place, and if such nominations are made the governor must commission such nominees. If the state chairman of the party fails to make such nomination, the governor may make such appointments of his own selection from the citizens of the county.[23]

The governor of Maryland appoints, biennially, with the advice and consent of the senate, in each of the counties of the state and in the city of Baltimore, three persons who constitute the board of supervisors of elections. Their salary is $2,500 in Baltimore and $100 in the counties of the state.[24] For the purpose of carrying on elections in South Carolina, the governor is authorized to appoint, at least thirty days prior to a general election for each county, three commissioners of election for state and county officers and three others as commissioners of election for presidential electors and members of Congress.[25] In Missouri counties of over 100,000 population, boards of election commissioners are also appointed by the governor.[26]

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[22] *Comp. Laws Mich.*, 1915, vol. 1, sec. 3681; *Code of Ala.*, vol. 1, sec. 437; *Remington's Comp. Stat. Wash.*, 1927 Supp., sec. 5147.

[23] *Comp. Stat. N. J.*, 1709-1910, vol. 2, pp. 2076 ff.; *Cum. Supp. to N. J. Stat.*, 1911-1924, vol. 1, pp. 1019 ff.

[24] *Ann. Code of Md. Bagby*, vol. 1, Act. 33, sec. 1 ff.

[25] *Code of Laws of S. C.*, vol. 3, sec. 233 ff.

State control over parish elections is also provided in Louisiana; but in this case the governor does not appoint the entire board. There is in each parish a board of supervisors of elections composed of three persons—the registrar of voters for the parish and two others appointed by the governor.[27]

In a few states the power of appointment is placed in a state board of elections. Thus in Arkansas the state board of election commissioners appoints three qualified electors in each county as commissioners of elections.[28] In Oklahoma the county election board is composed of three persons, one of whom is selected by the state election board and one by each of the two political parties receiving the highest number of votes at the last general election.[29] The state board of elections in Kentucky appoints in each county two members from the two leading political parties to serve with the sheriff as a county board of election commissioners. The sheriff, who presides at the meetings of the board, may vote only in case of dispute between the other members.[30] In Tennessee, Mississippi, and North Carolina, the state boards of elections also appoint the county boards of elections.[31] State boards of elections are sometimes appointed by the governor, as in Kentucky; by the joint vote of both houses of the legislature, as in Tennessee; or it may be an ex officio board, as in Arkansas, where it is composed of the governor, secretary of state, and attorney general.

Ohio places the responsibility for supervising elections in that state in the hands of a single officer known as the state supervisor of elections. He appoints, in the counties of that state, a board of deputy state supervisors and inspectors of elections. This board appoints all registrars of electors and judges and clerks of elections, designates the ward and precinct in which each shall serve, and designates both the places of registration and of holding elections.[32]

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[26] In counties of 100,000 to 150,000 there are two members; in counties of over 150,000 there are four members. *Ann. Supp. Mo. Stat.*, 1927, secs. 5052-5089.

[27] *Const and Stat. of La.*, 1920, vol. 1, p. 638 ff.

[28] *Digest of Stat. of Ark.*, 1921, sec. 3711.

[29] *Comp. Okla. Stat.*, 1921, vol. 2, sec. 6128 ff.

[30] *Carroll's Ky. Stat.*, 1922, secs. 1596a-1–1596a-5.

[31] *Ann. Code Tenn.*, 1917, vol. 1, sec. 1188a-1 ff.; *Hemingway's Ann. Miss. Code*, 1927, vol. 2, secs. 7998-99; 8021; *Consol. Stat. of N. C.*, 1919, vol. 2, sec. 5924.

In some cases responsibility for the conduct of elections within the county is placed in a single officer. In Nebraska counties of over 150,000 population (Douglas county, Omaha) the governor of the state appoints an election commissioner for a two-year-period. This election commissioner, "using his own judgment and discretion and not restricted by any recommendation whatever," appoints the election judges and clerks for each election district in the county.[33] By act of 1923 the office of superintendent of elections was established in counties of the first class in New Jersey. The office is filled by appointment by joint session of the state legislature. The superintendent of elections serves five years at a salary of five thousand dollars, payable by the county. It is his duty to enforce the laws of the state regarding the conduct of elections.[34]

REGISTRATION OF VOTERS [35]

Until after the middle of the nineteenth century, no formal registers of voters were made in most parts of the country. But with the growth of large cities and the increased freedom of movement the need for such registers have been recognized. As early as 1800 Massachusetts required the assessors of each town annually to compile a list of qualified voters, subject to revision by the selectmen. Other New England states made similar provisions during the next fifty years; and in 1859 New York provided for a register of voters.

At present most of the states provide for a system of registration, as a means of preventing fraudulent voting. In some states special provisions are made for the larger cities. Most commonly in cities new lists are made at definite intervals (of one to four years), and the voter must appear in person to be registered; but in a considerable number of states systems of permanent registration have been established; and fourteen states have provided for absentee registration. Several states do not require registration in rural areas; and there is no registration at all in Indiana or Arkansas. About half of the states provide for the enrollment of party members.

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[32] *Page's Ann. Ohio Gen. Code,* vol. 1, secs. 4788 ff.; 4803 ff.; 4874. By virtue of his office the secretary of state is *ex officio* supervisor of elections and performs all of the duties of the office.

[33] *Comp. Stat. Nebr.,* 1922, sec. 2252 ff.

[34] *Cum. Supp. N. J. Stat.,* 1911-1924, vol. 1, pp. 1177 ff.

[35] E. M. Sait, *op. cit.,* pp. 21 ff.; R. C. Brooks, *op. cit.,* pp. 383 ff.; P. O. Ray, *op. cit.,* pp. 260 ff.

Registration lists are made up by local officials. In two-thirds of the states some county control is provided; and in some of the Southern states the work is done entirely by county officers. State control is limited to the prescription of forms and, in some states, the appointment of county registration officers.

For the most part, voters register at the precinct polling places before a precinct board or officer; and in thirteen states the regular precinct election officers act also as registration officials. In New England registration is conducted by town officers; and in Michigan the supervisor, treasurer, and clerk act as a board of registration in each township.[36]

In some states, as New Mexico and Utah, the county board appoints special registration officers for each precinct.[37] In Montana, the county clerk is ex officio county registrar of voters. The county commissioners appoint in each precinct deputy registrars, who receive 25 cents for each voter registered. Notaries and justices of the peace are deputy registrars for their county, and may register electors residing more than ten miles from the court house.[38]

In Louisiana, the clerks of the district courts of the several parishes (except the parish of Orleans) are ex officio registrars of voters. In Georgia, the judge of the superior court of the county appoints three county registrars, who serve for a two year period.[39] The governor of Florida appoints in each county a supervisor of registration (for a four-year-term), who appoints district registration officers in each election district. In Mississippi, the state board of election commissioners appoints a registrar of elections in each county.[40]

The need of the registration of voters to prevent fraudulent voting is not so great in rural areas as in cities. Acquaintance among the people in the rural areas is such that repeating and impersonation will not take place as in the larger cities. The laws of some states take this into consideration; thus in Wisconsin and Kentucky the laws require registration in cities but not in rural areas. In some other states registration lists are made, but qualified voters who are not registered may swear in their votes.

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[36] *Comp. Laws Mich.*, 1915, vol. 1, sec. 3600.

[37] *N. Mexico Stat.*, 1915, sec. 1964.

[38] *Rev. Code Mont.*, 1921, vol. 1, sec. 553 ff.

[39] *Const. and Stat. of La.*, 1920, vol. 3, pp. 1916 ff.; *Ann. Code Ga.*, vol. 1, sec. 52 ff.

[40] *Fla. Cum. Stat.*, 1925, sec. 223; *Hemingway's Ann. Miss. Code*, 1927, vol. 2, secs. 8000-20.

ELECTION SUPPLIES

It is the duty of the local election authorities to provide ballots and other supplies for use in elections.[41] In several states the county board provides for the printing of the ballots; in others this is done by the special board of county election commissioners; in still others by the county clerk; and in Iowa and North Dakota by the county auditor.[42] The cost of printing the ballots is usually a county charge; in Kansas the cost is apportioned to the townships and cities in proportion to the votes cast at the last preceding general election.[43]

A third of the states now permit or require the use of voting machines by local election authorities. The statutes providing for their use show great variation. A referendum vote of the people is sometimes required; and in some cases more than a majority vote of the county board is required for their adoption. In some states only machines which have been approved by state authorities may be adopted.

While eighteen states now authorize the use of voting machines, seven of these make no use of them and six others use them to a very limited extent.[44] The most extensive use is in New York, Connecticut, Indiana, Iowa, and Washington. They are used in New York state in territory including about 75 per cent of the population if New York City is not considered; in about 90 per cent, including that city. In Connecticut, voting machines are used in territory including 63 per cent of the population; in Indiana, 45 per cent; in Washington, 56 per cent; and they are used in twenty of the ninety-nine counties in Iowa. While the use of such machines is usually optional with local authorities, it has been made mandatory in cities of the first class in New York, in Indiana counties of more than 36,000 population, and in counties of the first class in Montana.

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[41] The Australian or official ballot is now used in forty-four states. For a discussion of types of ballots and extent of their use see E. M. Sait, *op. cit.*, pp. 559 ff.; cf. P. O. Ray, *op. cit.*, pp. 287 ff.

[42] *Code of Ia.*, 1927, sec. 769; *Comp. Laws N. D.*, 1913, vol. 1, secs. 964 ff.

[43] *Rev. Stat. Kas.*, 1923, ch. 25-109.

[44] T. D. Zukerman, *The Voting Machine* (1925); E. M. Sait, *op. cit.*, pp. 577-79.

ELECTION PRECINCTS AND OFFICERS

Until the close of the eighteenth century each town or county usually formed a single voting district, and rural voters might have to travel many miles to the place of election. At the present time election precincts are established for the convenience of voters, each with a polling place. Towns and townships usually form election precincts unless divided; and city wards are also frequently used; but the larger towns and cities are subdivided. For general elections, precincts are usually established by the county boards;[45] but in some states by special county election authorities. In Pennsylvania they are determined by the court of quarter sessions. In New England, towns and city wards are subdivided by the town or city officials; and in Michigan, townships are divided into election districts by the township board.[46]

State laws often establish limits as to the number of voters in a precinct, from 200 in California to 600 in New Jersey. In Illinois they are to contain as nearly 500 voters as practicable, and must be divided when the number exceeds 800. In Kentucky the number must be as nearly 300 as practicable, and in no case over 350.[47] The average number of voters in a precinct may be estimated to be about 400; in the presidential election of 1928 about 300 voters per precinct participated. The total number of election precincts in the United States is probably over 125,000.

Precinct election officers or judges of elections are provided for the actual conduct of elections. While there are usually three such officers, there are many variations. New York and New Jersey have four inspectors or election officers, while North Carolina and Oregon have only two. In some cases the number varies with the number of voters in the precinct. Thus in Montana there are five judges of elections in precincts having 100 voters or more, and only three if there are less than this number.[48]

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[45] *Code of Ala.*, vol. 1, sec. 425; *Rev. Stat. Ariz.*, 1913, secs. 2913-14; *Comp. Laws Colo.*, 1921, sec. 7705; *Code of Ia.*, 1927, sec. 782; *Comp. Laws N. D.*, 1913, vol. 1, sec. 950. In Louisiana election precincts are established by the police juries: *Const. and Stat. of La.*, 1920, vol. 1, pp. 638 ff. In Kentucky and Oregon they are formed by the county court; in Arkansas, by the county election commissioners: *Digest Stat. of Ark.*, 1921, sec. 3735.

[46] *Pa. Stat. Complete to 1920*, sec. 9804; *Comp. Laws Mich.*, 1915, vol. 1, sec. 9804.

[47] *Pol. Code of Calif.*, 1923, sec. 1125; *Comp. Stat. N. J.*, 1709-1910, p. 2076, sec. 9; *Cahill's Ill. Rev. Stat.*, 1927, ch. 46, sec. 31; *Carroll's Ky. Stat.*, 1922, sec. 1443.

The methods used to select the precinct election judges to conduct the election show great variation. The most common is appointment by the county board.[49] But in some states this power has often been conferred upon special boards of election commissioners.

Other methods of selecting election judges are also used. In Pennsylvania, one judge and two inspectors of elections are elected in each election district for a period of one year.[50] In Massachusetts towns precinct election officers are appointed by the board of selectmen.[51] In Michigan townships, the supervisors, the two justices of the peace whose term will first expire, the township clerk and the assessor are ex officio inspectors of election. In Wisconsin and Minnesota, township boards serve as election judges. In Kansas, election judges are appointed by the mayor in cities and by the township trustee in rural areas.[52]

In Nebraska, the clerk of the district court appoints election judges for each precinct in all counties not having an election commissioner.[53] In Oregon, the county clerk prepares a list of legal voters from each precinct in the county, from which the county court appoints two judges and three clerks of election for each election precinct for a two-year period.[54]

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[48] *Rev. Codes Mont.*, 1921, vol. 1, sec. 587 ff. Election clerks, in addition to the judges, are often provided. In Florida the county commissioners appoint three persons as inspectors of elections, and one clerk of election for each polling place in the county. The county board in Iowa appoints three election judges for each election precinct; the judges then select two clerks. *Fla. Cum. Stat.*, 1925, sec. 249; *Idaho Comp. Stat.*, 1919, vol. 1, sec. 512 ff.

[49] See for example: *Rev. Stat. Ariz.*, 1913, sec. 2916; *Comp. Laws Colo.*, 1921, sec. 7681 ff.; *Cahill's Ill. Rev. Stat.*, 1927, ch. 46, secs. 32-38; *New Mexico Stat.*, 1915, sec. 1980; *Remington's Comp. Stat. Wash.* 1922, vol. 2, sec. 5158; *S. D. Rev. Code*, 1919, vol. 2, sec. 7248; *Rev. Civil Stat. Texas*, 1925, vol. 1, arts. 2937-38. In the case of cities the appointment would be by the council.

[50] *Pa. Stat. Complete to 1920*, sec. 9425.

[51] *Gen. Laws Mass.*, 1921, vol. 1, ch. 54, secs. 11-12.

[52] *Comp. Laws Mich.*, 1915, vol. 1, sec. 3673; *Rev. Stat. Kas.*, 1923, ch. 25-401.

[53] *Comp. Stat. Nebr.*, 1922, secs. 1925-26. Only counties having a population of over 150,000 have such election commissioners.

[54] *Ore. Laws Supp.*, 1921-27, Pt. I, secs. 3890, 3908. In counties of over 100,000 population there is appointed in each precinct by the board of county

A number of state laws require some qualifications for election judges. Most commonly the only requirements are the right to vote and an ability to read, write and speak English. In Illinois, in addition to ability to read, write and speak the English language, the judges must be of "fair character, approved integrity and well informed"; and in Nebraska they must be "of good character, approved integrity, well informed, able to read, write and speak the English language."[55] But no method is provided for testing these qualifications. New York requires election inspectors to have a general knowledge of the duties of their office; and in cities there have been formal examinations by the election boards to test this; but these have been often "farcical." Under a former New Jersey law, candidates were examined by the civil service commissioner.[56]

In some cases appointments are required to be based on the recommendations of party authorities, and to include representatives of more than one party; and in practice election boards are often bi-partisan.

To meet the difficulties of counting the votes promptly in the larger precincts, twelve states (most of them west of the Mississippi River) have provided for second counting boards in addition to the regular election officers.[57] Missouri has had such boards since 1875; but the other states have adopted this plan since 1899. In Missouri and Oklahoma the law is compulsory and applies to all elections in all precincts. In six other states it is compulsory in all precincts where a certain number of votes are cast. In several states it applies to all general and primary elections, in some only to general elections. In some states the counting board begins operations soon after the polls are opened, in others not for several hours.

The Iowa law may be cited to indicate the use of special counting boards. In all precincts in which 300 or more votes were cast at the last preceding general election, the board of supervisors may appoint three additional judges and two additional clerks to be

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commissioners, a supervisor of elections. The other judges and clerks in the precinct are appointed by the county board from a list submitted by the supervisor of elections for the precinct.

[55] *Laws of Ill. Spec. Sess.*, 1928, p. 32; *Comp. Stat. Nebr.*, 1922, sec. 1925; *Ore. Laws Supp.*, 1921-27, Part I, sec. 3890.

[56] E. M. Sait, *op. cit.*, p. 586.

[57] Lucile McCarthy, "Counting Votes before the Polls Are Closed," 19 *Am. Pol. Sci. Rev.* 784 (1925).

known as the election "counting board." The judges of the "receiving board" conduct the election, the members of the "counting board" not beginning work until 1:00 P.M. At that time they go to the voting place, and retiring to a partitioned room or space, begin the counting of the ballots. As they finish counting the ballots in a box they exchange the empty box for that in which votes are being received and proceed with the count and tabulation of the votes. When the polls close the receiving board unites with the counting board in counting the ballots.[58]

In Kansas there are double election boards in all precincts in which an aggregate of 250 or more votes were cast at the second preceding general election. These boards go on duty four hours after the polls open.[59] The precinct election boards in Oklahoma appoint four official counters, who must be "good penmen, and rapid in figures." They proceed to the polls and begin the counting of the ballots at 10:00 A.M.

THE DIRECT PRIMARY AND THE COUNTY

Since the nomination of candidates for public office by the direct primary became the generally accepted practice, county election machinery has acquired an increased burden. Primaries are usually conducted by the regular election boards, and the ballots are printed at public expense by the same authorities that furnish ballots for regular elections. Primary elections are also usually held at the same polling places as regular elections.

Certain variations, however, to this general practice should be noted. In Idaho and some other states primary elections are not held at the regular polling places. In several states the regular election judges do not serve in primaries, special officials being selected by the party committees for this work. In some states ballots for primary elections are not supplied by public authority. The expenses of carrying on the primary are usually paid by the county; but the entire cost is paid by the party in Arkansas, Georgia, Mississippi, South Carolina, and Texas; and in Idaho only the ballots and election supplies are paid for by public authority.[60]

In discussing the effect of the direct primary on the party system in counties, Professor Merriam has stated: "in counties party government does not effectively function. The counties of the United States are the most backward element of its government, and they are not organized to encourage or permit responsible party government. They are the strongholds of the spoils system and of petty graft. There is little party leadership in the counties for any nominating system to destroy, nor will there be until county government undergoes a complete reorganization." [61]

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[58] *Code of Ia.*, 1927, ch. 42.

[59] *Rev. Stat. Kas.*, 1923, sec. 25-501 ff.; *Comp. Okla. Stat.*, 1921, vol. 2, sec. 6144 ff.

[60] See E. M. Sait, *op. cit.*, pp. 389 ff.

COUNTY CANVASSING BOARDS

The last step in the conduct of elections within the county is making the official canvass. This is usually done by the county board, or by the county board of elections where such a board has been established.

Other methods are used in some states. In Illinois, Colorado, and Wyoming, the county clerk, with the assistance of two justices of the peace, acts as a canvassing board. In Wisconsin, the county clerk and two associate canvassers selected from certain designated officers canvass the returns.[62]

In Michigan, the county board selects three electors of the county, who with the county clerk constitute a county board of canvassers. In Minnesota, the canvassing board is composed of the auditor, the chairman of the county board, and two justices of the peace selected by the auditor. In North Dakota, the county auditor must call together a majority of the county commissioners of the county, or the county treasurer, county judge, and one of the county commissioners to canvass the vote of the county. In North Carolina, the board is composed of one member from each township, ward or precinct in the county, selected by the registrar and judges of election.[63]

As has been noted, there is wide variation in organization and practice in the process of conducting elections in the several states. The recent tendency is to centralize control over elections more largely in county authorities; and in some states there is an increasing measure of state control. This should tend to improve conditions and make the county a more satisfactory agent of the state in conducting elections.[64]

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[61] Merriam and Overacker, *Primary Elections* (1928), p. 233; cf. Gilbertson, *The County, the Dark Continent of American Politics.*

[62] *Cahill's Ill. Rev. Stat.* (1927), ch. 46, sec. 75; *Comp. Laws Colo.*, 1921, sec. 7758; *Wyo. Comp. Stat.*, 1920, sec. 2511; *Wis. Stat.*, 1927, vol. 1, chs. 6, 61.

[63] *Comp. Laws Mich.*, 1922 Supp., sec. 3848 (175); *Mason's Minn. Stat.*, 1927, vol. 1, sec. 474; *Comp. Laws N. D.*, 1913, vol. 1, sec. 1009; *Consol. Stat. N. C.*, 1919, vol. 2, secs. 5984 ff.

THE RECALL

In the twelve states which make constitutional provision for the recall of public officers by popular vote, these provisions apply to elective county and other local officers.[65] In seven of these states [66] the recall is provided for all elective offices; in Oregon it applies to every public officer, and in Kansas to every public officer holding either by election or by appointment. In five states [67] it does not apply to judges or judicial officers. The constitutions of California and Colorado expressly provide for the recall of county officers, and the constitution of Louisiana for the recall of parish officers.

Most of the state constitutions providing for the recall prescribe the procedure to be followed. But in California and Colorado, while the procedure for state officers is set forth in the constitution, that for local officers is to be provided by law; and until so provided, the legislative body of each county or other local district is authorized to designate the manner of exercising this power.

The provisions as to petitions, the time of holding the recall election, and the method of choosing a successor are usually the same for state and local elections; but they vary in some respects in different states. Recall petitions in most cases must be signed by 25 per cent of those voting at the last preceding election for governor (Michigan and Wisconsin), or justice of the supreme court (Oregon and Nevada), in the county or other district, or of those voting at the last election for all candidates for the office involved (Arizona and Washington). But in Washington 35 per cent is required for officers of counties other than the first, second and third class; and the higher percentage is also required for other political subdivisions. In Kansas, only 10 per cent of the qualified electors is required for state offices, but 25 per cent for officers of a county or a district or municipality within a county.

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[64] For a study of voting in rural areas see Charles H. Titus, "Rural Voting in California, 1900-1926," 9 *Southwestern Pol. and Soc. Sci. Quart.* 198-215 (1928). The author, after a study of voting in twenty-three rural counties in California, reaches the conclusion that "Rural areas treated collectively cast a larger relative vote (on the basis of voting population) than do urban areas taken collectively"; and "the smaller the population of a given area the larger the relative vote." This study indicates that non-voting is an urban, rather than a rural problem.

[65] *Index Digest to State Constitutions,* N. Y. State Const. Conv. Com. (1915), p. 1240; W. F. Dodd, *State Government* (1928), pp. 553-56; A. N. Holcombe, *State Government in the United States* (1926), pp. 335-36; J. M. Mathews, *American State Government* (1924), pp. 126-28; *Const. of Wis.*, Art. XIII, sec. 12.

[66] Oregon, Arizona, California, Colorado, Nevada, Kansas, and North Dakota.

[67] Idaho, Washington, Michigan, Louisiana, Wisconsin.

In some states, officers are not subject to recall until after they have served for a specified period—six months in Arizona, California, Nevada, and Oregon; one year in Louisiana and Washington. In some states it is provided that where an officer is retained at a recall election, he is not again subject to recall for six months (California), or during the term for which he was elected (Arizona, Colorado, Nevada, and Oregon).

Petitions asking for the recall of a county official are usually presented to the county officer having control over county elections and with whom nomination petitions are filed. This is usually the county clerk; in some states it is the county auditor; and in Michigan such petitions are presented to the probate judge of the county. Upon the presentation of such petition a special election must usually be called, within a specified period, ranging from twenty days in Michigan, Oregon, and Nevada to ninety days in Kansas.

Three types of recall election are used. In some states, upon the presentation of a recall petition a new election is held at which the incumbent is a candidate unless he requests that his name shall not go on the ballot. Other candidates are nominated by petition as in the case of primary elections. At the recall election the candidate receiving the highest vote is elected, whether he be the incumbent sought to be recalled or another.

In other states there are two questions presented on the recall ballot: the first is whether the incumbent shall be recalled from office; and the second is who shall fill the place in case the incumbent is recalled. While this method is an improvement over the first, it does not entirely remove the difficulty.

Another method by which this situation may be met is to have the single question of the recall of the official presented to the electorate at the recall election. This is done in Kansas by providing that in case of the recall of an officer, a vacancy exists, "to be filled as authorized by law." In Louisiana the constitution provides that "the sole issue tendered at any recall election shall be whether such officer shall be recalled." Oregon, by constitutional amendment of 1926, changed from the plan of having the recall determined by an election contest in which the person receiving the highest number of votes is elected, and provided that "if an officer is recalled from any public office the vacancy shall be filled immediately in the manner provided by law for filling a vacancy in that office arising from any other cause."

Little use has been made of the recall; and while it has been invoked more often for local than for state officers, few cases have been reported of its exercise against county officials.[68] As these are mainly administrative rather than policy determing officers, and elected for short terms, there is little need for the recall, nor is it well adapted for situations where removal may be desirable. Under present conditions state administrative control, with power of removal, seems preferable to the recall by popular vote. With a reorganized county government vesting larger powers in a few officials for longer terms, provision for their recall may be of service as a method of popular control to be used in exceptional cases.

INITIATIVE AND REFERENDUM[69]

The popular referendum has been used to a considerable extent in county affairs on specific questions. In a number of states, constitutional and statutory provisions require referendum votes on such matters as the creation of new counties, changes in county boundaries and county seats, the adoption of township government, proposed bond issues, and the construction of new county buildings. Before the adoption of state and national prohibition, many states provided for county or other local option votes on the prohibition of the liquor traffic. In some states recent legislation has required other questions to be submitted to the voters, as the erection of a county hospital, the establishment of a county library, and the adoption of the county unit system of educational administration.

Twelve states—half of those which have provided for the general initiative and referendum for state legislation—also provide for their use by counties and other local districts. Under the Utah constitution, power is reserved to the voters of any legal subdivision of the state as to any desired legislation and any law or ordinance passed by the law making body. The constitutions of California, Nevada, Arizona, Arkansas, and Oklahoma refer specifically to counties; while in Oregon, Colorado, South Dakota, and Ohio the powers are reserved to each or to every municipality.[70]

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[68] Cf. Bird and Ryan, *The Recall of Public Officers*, ch. 8.

[69] For a recent discussion of the Initiative and Referendum, see W. F. Dodd, *State Government* (1928), ch. 20; also, N. D. Houghton, "The Initiative and Referendum in Missouri," 19 *Missouri Historical Rev.*, 268-99 (1924-25); J. D. Barnett, *The Operation of the Initiative, Referendum and Recall in Oregon* (1915).

Ohio has provided by statute that the initiative and referendum provisions shall apply "in so far as possible in every county"; and the Wisconsin law providing for direct legislation in cities is applicable to counties. The Michigan constitution requires a local referendum on all special legislation; and provision has been made by statute for a limited use of the optional referendum.[71]

Where, as in most of these states, the procedure is prescribed in the constitution, the provisions are similar to those for state legislation. The number of signatures to petitions is sometimes greater for local than for state measures; and the number for an initiative petition is usually more than for a referendum petition. In Arizona, California, Colorado, Nevada, and Oregon, 15 per cent of the electors are required for an initiative petition and ten per cent for a referendum petition on local measures.

In California, Oklahoma, and Utah, the procedure for local measures is to be provided by law; but in California, until otherwise provided by law, the legislative body of any county, or other local district, may provide for the manner of exercising the powers; and in Oklahoma boards of county commissioners may provide for the time of exercising such powers as to local legislation. In Arizona, cities, towns and counties may prescribe the procedure, within restrictions of general laws.

The scope of powers intended to be conferred is not always clearly indicated. In Arkansas the first constitutional provision was so worded as to give the voters of every incorporated city, town and county the same powers as to laws, and even amendments to the constitution, as were reserved to the people of the state as a whole; but an amendment adopted in 1918 provided that it should apply

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[70] *Index Digest of State Constitutions,* N. Y. State Const. Conv. Com. (1915), p. 788.

[71] *Page's Ohio Gen. Code,* vol. 1, secs. 5018-8; *Wis. Stat.,* 1927, vol. 1, sec. 59.02; *Const. of Mich.,* Art. IV, sec. 30; *Comp. Laws Mich.,* 1915, vol. 1, sec. 2274 (13).

"to all local, special and municipal legislation of every character in and for their respective municipalities and counties."[72] In Oregon, Nevada, and Colorado the local initiative and referendum apply to all local, special and municipal legislation of every character; in Arizona, to all local matters on which local governments are or shall be empowered by general laws to legislate; in Oklahoma, to all local legislation or action in administration of local government.

In Oregon, it has been held by the courts that the constitutional amendment providing for the local initiative and referendum is applicable to counties, but is not self-executing, requiring statutory provisions as to procedure; and that the power granted to the people of the respective counties is not unlimited, and requires specific grants. Proceedings for the removal of a county seat under an initiative petition of 8 per cent were upheld, where the previously enacted statute had required a petition of three fifths of the voters for this purpose. On the other hand, the provisions for the initiative and referendum did not authorize the voters of a county to adopt a law authorizing a tax in the absence of an enabling act passed by the legislature or the people of the whole state. In California, it has been held that, since proposed legislation by the people of a county must be submitted to the county board of supervisors, it must be within the scope of the supervisors' powers.[73]

Little information is available as to the use of the initiative in counties, and, in the prevailing situation as to the limited scope of authorized legislation by counties, there seems to be few occasions for its use. The referendum is, however, used to a considerable extent on various matters, even in states where the popular initiative is not authorized; and if the legislative authority of counties should be enlarged, opportunities for the further use of the referendum and also of the initiative might be extended.

THE SHORT BALLOT

County elections form a large part of the ballot's burden, which has overloaded the voter, and makes the democratic form in practice often a system of unpopular government.[74] In respect to the national government the elector votes for not more than four positions at each election. The various forms of city government for the most part provide for the election of only a few officials. In state elections there are a number of elective officers, but these are at least positions of some importance. In these branches of government some measure of popular control is possible.

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[72] Constitutional Amendment No. 13.

[73] *Schubel v. Ortel,* 60 Ore. 503 (1912), 120 Pac. 375; *Barber v. Johnson,* 86 Ore. 390 (1917), 167 Pac. 800, 1183; *Carriker v. Lake Co.,* 89 Ore. 240 (1918), 171 Pac. 407, 173 Pac. 573; *Harnett v. Sacramento Co., Galvin v. Supervisors Contra Costa Co.,* 195 Cal. 676, 686 (1925); 235 Pac. 445, 450.

"County government, on the contrary, is ideally designed to *resist* popular control. One way of concealing a public officer from effective public scrutiny is to make his office so *small* that it will inevitably fail to command public attention. A second way is to have so *many* elective offices that the public cannot keep track of them all. A third way to baffle the public is to *divide the responsibility,* so that each public officer under attack can excuse himself on the ground that the necessary coöperation of some other officer was lacking. County government involves the liberal use of all three of these expedients; and so, in spite of its superficial aspect, the county is the least democratic of our political institutions." [75]

Many of the elective county officers are of such minor importance that the voters take little or no interest in their election. "It is of no use arguing that they ought to take an interest in the contest for coroner or county clerk so that the best man may get the job and draw the salary! In the first place it isn't true—each citizen ought to have better business than attending to his share of so small a matter—and secondly, they simply won't play the rôle assigned to them anyway." [76] Since county officers are usually elected at a general election when state and national officers are being selected, the voter considers the merits of the candidates for these major offices and the county officials ride in with the ticket.

Moreover, the number of offices to be filled by election is such that in most cases the electorate cannot register an intelligent choice. With fewer elective officers, the voter could vote with a greater degree of understanding, and better officials should be secured. As these officers are administrative in nature, rather than political or policy determining, there is little occasion for popular election. Special qualifications are needed for a coroner, a surveyor, an auditor, a county superintendent of schools, and other county administrative officers, which can be better secured by appointment than by election.[77]

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[74] C. A. Beard, "The Ballot's Burden," 24 *Pol. Sci. Quart.*, 588 (1909); cf. Beard's *American Government and Politics;* A. M. Kales, *Unpopular Government in the United States* (1914).

[75] R. S. Childs, "Ramshackle County Government"; cf. section on "Counties," in *Explanation and Defense of the Model State Constitution.* These may be found in J. M. Mathews, *American State Government* (1924), App.

[76] Richard S. Childs, "Counties."

The use of the short ballot in county government would also tend to concentrate authority and responsibility. At the present time there is no central authority having control over the county administrative officers. ''These other officers, the sheriff, county clerk, register, district attorney, superintendent of the poor, coroner, treasurer, comptroller, etc., are independently elected and sit serene on their little independent islands of authority, caring nothing for the tax rate since the board of supervisors carries the brunt of that, and caring nothing for the supervisors except for the need of getting the money out of them once a year. The supervisors, on their part, can starve these executives without being blamed for the resultant conditions in the jail or the poorhouse. It is not a government, it is a dozen governments looseley tied together.''[78]

The election of a large number of county officers is an unsatisfactory method, and the American county offers a fertile field for the extension of the short ballot principle. This would not only improve the personnel of county government but it would concentrate authority and responsibility, both of which are sadly lacking in most cases.[79]

Some of the work now done by county authorities may well be taken over more directly by the state, especially in the administration of justice and the enforcement of state law. In these and other fields, the tendency to state administrative supervision should be better coördinated and made more efficient.

At the same time the enlarging scope of county activities may be further developed to meet present-day conditions, by taking over functions from the declining townships and other minor units. ''If only the ramshackle county government were ready to take over the small-scale local functions of the little one horse units, and do the work with the economy and superior technique which a larger unit ought to be able to offer, we should be already witnessing the rapid development of the counties as strong rural municipalities, bringing to county and small town dwellers the blessings and conveniences of urban civilization and science and modern collective service.''[80]

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[77] It should be recognized that the election of a number of minor officers serves to strengthen the political organization, as the candidates for these offices and their friends are added to the list of political workers, and help to swell the total vote for the ticket.

[78] Richard S. Childs, ''Counties.''

[79] H. S. Gilbertson, *The County* (1917), ch. 4.

The path of progress lies in the direction of unity and simplicity. Some of the elective officers should be made appointive, and those who remain elective should be strengthened in power and importance so that they will command the attention of the voters. The ballot should be shortened so that it may be voted with discriminating intelligence. Responsibility should be clearly located in a single head. ''The limbs and the body must be joined together and put under the easy control of a brain.''[81]

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[80] R. S. Childs, ''Counties.''

[81] R. S. Childs, ''Ramshackle County Government.''

PUBLIC OFFICIALS 1920

	State	*County*	*City*
Alabama	129	429	302
Arizona	61	129	82
Arkansas	136	320	178
California	419	1,232	1,755
Colorado	161	457	348
Connecticut	109	37	604
Delaware	26	49	61
Dis. Columbia	2		168
Florida	118	217	285
Georgia	127	442	470
Idaho	68	221	108
Illinois	497	1,167	2,041
Indiana	168	795	862
Iowa	187	1,028	670
Kansas	158	724	472
Kentucky	195	464	392
Louisiana	163	165	539
Maine	112	109	264
Maryland	159	183	438
Massachusetts	506	207	2,188
Michigan	330	778	1,236
Minnesota	456	695	725
Mississippi	147	317	229
Missouri	308	903	1,370
Montana	107	444	149
Nebraska	86	580	251
Nevada	33	80	26
N. Hampshire	61	64	173
New Jersey	227	336	1,514
New Mexico	50	138	46
New York	964	641	4,897
No. Carolina	87	428	391
North Dakota	41	358	90
Ohio	444	1,115	1,800
Oklahoma	162	711	403
Oregon	91	318	301
Pennsylvania	518	970	3,323
Rhode Island	62	13	251
So. Carolina	60	218	169
South Dakota	71	416	95
Tennessee	152	500	350
Texas	251	1,640	1,056
Utah	52	173	182
Vermont	41	70	157
Virginia	156	364	458
Washington	193	506	528
West Virginia	105	273	193
Wisconsin	289	521	950
Wyoming	60	130	44
U. S. (1920)	9,126	22,092	33,505
U. S. (1910)	7,202	19,044	33,210

CHAPTER XI

COUNTY EMPLOYEES AND THE MERIT SYSTEM

Although the quality of the personnel determines in large part the success of administration in county government, the problem of recruiting and maintaining an efficient staff of employees has not received adequate consideration. This may be accounted for in part by the feeling that the number of employees in the service of the county is in most cases not sufficiently large to warrant the effort and expense necessary to bring about needed improvements. That the question of personnel is of importance, however, is indicated by the large percentage of the total expenditures of county governments that goes into salaries and wages.

In the state of New York for the year 1921-22, two-fifths of the expenditures of counties was chargeable to the payroll item. The 8,357 county employees received $12,126,027 of the grand total of $32,843,781 expended for county government.[1] In the large urban counties the number of employees is considerable; but in the rural counties the number of employees is small. But whether the number is large or small, their relative importance to satisfactory administration is still great.[2]

Among the important considerations in personnel administration are: (1) recruitment, (2) pay and treatment while in the service, including workmen's compensation, and (3) retirement of superannuated employees. These phases of the problem of personnel administration in county government will now be considered.[3]

THE MERIT SYSTEM

In a consideration of the county employee, the problem of recruitment is of primary importance; and in connection with the recruitment of public employees generally the use of the merit system of appointment has been the most significant development. But while the merit system has made fair progress in national, state, and municipal governments, it is used to only a very limited extent in county government. The result of this failure to extend the merit system of appointment to counties has been summarized by the Secretary of the National Civil Service Reform League as follows:

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[1] See *Report of the Special Joint Committee on Taxation and Retrenchment in New York*, 1923, ch. 10.

[2] See Winston Paul, ''The County Employee,'' 47 *Annals Amer. Acad. of Pol. and Soc. Sci.*, 81-85 (1913).

[3] For a good discussion of the personnel problem in government see Leonard D. White, *Introduction to the Study of Public Administration* (1926), chs. 9-17; W. F. Willoughby, *Principles of Public Administration* (1927), chs. 14-24.

"The management of county charitable institutions, the important and difficult work in county legal offices and the administration of county public works, all calling for trained expert services, are commonly conducted by political appointees, chosen because of their political beliefs and activities and but poorly qualified to do their work. County jails, workhouses, and other correctional and charitable institutions are badly kept and mismanaged, and the wards of the community are ill treated or not treated at all. The clerical service in county offices is frequently inefficient, the business of the county clerk's and county register's offices is poorly conducted, and records are kept at the best in a haphazard, accidental fashion which is expensive alike to the county and to the individual citizen in his business affairs. Meanwhile, the service of the county is the property of the political party which happens to be in power and supports a small army of political hangers-on who form the nucleus of the political spoils machine. In the service of a great and important administrative division of the state, in other words, the evils of the spoils system are allowed to continue unabated."[4]

There are only four counties in the United States which have separate agencies to administer the merit system in the counties in which they are located. These are Cook County, Illinois (Chicago); the counties of Los Angeles and Alameda in California; and Milwaukee County, Wisconsin.[5] There are also some counties in which a local board or commission administers the merit system for combined city and county governments. Such a plan is used in San Francisco, Denver, St. Louis, and Baltimore. In New Jersey,

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[4] Robert W. Belcher, "The Merit System and the County Civil Service," 47 *Annals of Amer. Acad. of Pol. and Soc. Sci.*, 101 (1913). Also see *Bull. of Mass. Const. Comm.*, 1917-18, vol. 1, pp. 342-43.

[5] The Michigan legislature at its 1927 session passed an act providing for the merit system to be administered by an independent agency in Wayne County (Detroit); but this act has been held invalid.

New York, and Ohio, the state civil service commission is by law made the agency to administer the merit system for counties which adopt it or come under its operation as provided by law.

Although the use of the merit system in county government is thus very limited, some consideration may be given to the cases where it is now in operation. These will indicate possible methods of administering a county merit system.

The constitution of New York since 1895 provides that appointments and promotions in the civil service of all of the civil divisions of the state "shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive." The Court of Appeals of New York has held that under this provision counties are civil divisions of the state and therefore included in the civil service.[6] The state civil service commission has been authorized by law to prescribe and enforce suitable rules and regulations for carrying this provision into effect.[7] The rules of the commission provide that the merit system shall not be deemed to extend to employments in the civil divisions of the state, until, after due inquiry by the commission, it shall be found practicable. In pursuance of this provision, the state civil service rules have been extended to cover the service of seventeen of the more populous counties. The total number of employees in the county service who were subject to the merit system in 1925 was 6,872; in 1926 this had increased to 7,584.[8]

New Jersey, by act of 1908, regulates the employment, tenure, and discharge of employees in counties. The clerk of the county must, upon presentation of a petition signed by a certain number of legal voters—the number varying with the class of the county—submit to the voters the question of the adoption of the state civil service law. In case of its adoption, all appointments to and promotions in the service of the county must be made only according to merit and fitness, which is to be determined by competitive examinations. While all examinations are held by the state commission, they must be held in the localities in which the appointment is to be made. The offices, places and employments of the county are classified by the commission.[9]

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[6] *Chittenden v. Wurster*, 46 N.E. (N. Y.) 857 (1897).

[7] *Cahill's Consol. Laws of N. Y.*, 1923, ch. 8.

[8] *Forty-Fourth Annual Report of the State Civil Service Commission, 1927*, p. 15. Letter from George R. Hitchcock, Assistant in charge, Department of Civil Service, State of New York, under date of December 18, 1928. The law was applied to five counties in 1900; to four counties in 1905; and to eight counties in 1909. Robert W. Belcher, *op. cit.*, pp. 105-06. For cases arising under the New York civil service act see: *McNeles v. Board of Supervisors of Renssalaer Co.*, 159 N. Y. S. 1009 (1916); affirmed in 114 N.E. (N. Y.) 1071; *People v. Anderson*, 190 N. Y. S. 300 (1921); *Faulkner v. Board of Supervisors of Westchester Co.*, 131 N. Y. S. 998 (1911).

Seven of the twenty-one counties in New Jersey have adopted the provisions of the civil service law by referendum vote, the state civil service commission acting as a personnel agency for these counties.[10] After the adoption of the law in a county, the positions are classified by the state commission. In case of a vacancy, the state commission certifies three names to the appointing authority, and one is selected from these three.[11]

The act was attacked before the Court of Errors and Appeals of New Jersey, on the grounds that it impaired the privilege of local self government, since the commission which administers the law is not selected by the counties affected nor from among their citizens or inhabitants. The act was sustained by the court, however, which held that the right of local self government does not extend so far as to limit the power of the legislature to that extent.[12]

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[9] *Comp. Stat. New Jersey,* 1709-1910, vol. 3, pp. 3795 ff.; *Cum. Supp. to New Jersey Stat.,* 1911-1924, vol. 2, ch. 144-87 ff.

[10] Letter from Charles P. Messick, Chief Examiner and Secretary, Civil Service Commission, State of New Jersey, under date of December 13, 1928.

[11] The following table compiled from the *Twentieth Annual Report of the Civil Service Commission of the State of New Jersey, 1927,* shows the results of open competitive examinations in six counties of that state.

Jurisdiction	*Number of examinations*	*Number of applicants*	*Number of eligibles*	*Number of failures*	*Appointments*
Essex County	50	557	294	263	119
Hudson County	18	304	134	170	62
Passaic County	25	84	38	46	30
Bergen County	37	89	65	24	21
Union County	41	174	92	82	28
Mercer County	21	557	280	277	15
Totals	192	1765	903	862	275

[12] *Booth v. McGuiness,* 75 Atl. (N. J.) 455 (1910); *Walker v. Board of Chosen Freeholders,* 82 Atl. (N. J.) 422 (1912); *Essex County v. Civil Service Commission,* 121 Atl. (N. J.) 695 (1923); *Stephens v. Civil Service Commission,* 125 Atl. (N. J.) 314 (1924); *Stephens v. Civil Service Commission,* 127 Atl. (N. J.) 808 (1925).

A constitutional amendment adopted in Ohio in 1912 provides that appointments and promotions in the civil service of the counties, as well as in that of the state and of cities shall be made according to merit, to be ascertained, as far as practicable, by competitive examinations.[13] The state civil service law which was passed pursuant to this amendment places the counties on a merit basis.[14] No person may be appointed or removed in the civil service of the counties in any manner other than that prescribed in the state civil service act. The law divides the civil service of the counties into a classified and an unclassified service. The classified service includes the competitive class and the unskilled labor class. The competitive class includes all positions for which it is practicable to determine the merit and fitness of applicants by competitive examinations. Vacancies in the unskilled labor class are filled by appointment from lists of applicants registered by the commission. In making up such lists the commission must consider the age, residence, physical condition, ability to labor, honesty, sobriety, industry, capacity, and experience in the work or employment for which he applies.

The state civil service commission is required to administer the merit system for all counties,[15] but it may authorize the municipal civil service commission in the largest municipality of any county to act as its agent in administering the merit system. Under this provision the Cleveland civil service commission has been authorized to act as the agent of the state commission in administering the merit system in Cuyahoga county.[16]

As has been pointed out, four counties in the United States have separate agencies to administer the merit system therein. A law was passed in Illinois in 1895 providing for the use of the merit system in Cook county (Chicago); at first the law applied to only about one third of the county employees. The law has later been amended and strengthened and its administration improved.

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[13] Art. XV, sec. 10.

[14] *Page's Ann. Ohio Gen. Code,* vol. 1, sec's 486-101 ff.

[15] The reports of the commission indicate that an unusually large proportion of the applicants pass the examinations in Ohio. The report for 1924 shows that fifty-four examinations were held for positions in the county service with the following results: number of applicants, 759; number examined, 697; number passed, 641; number failed, 45; number appointed, 293. In thirty-five examinations all of the candidates examined passed; and in others all but one or two passed. *Report of the Ohio Civil Service Commission, 1924.*

[16] Letter from Fred Telford, Bureau of Public Personnel Administration, Washington, D. C., under date of January 21, 1929.

The civil service commission of Cook county is composed of three persons appointed by the president of the county board; not more than two of the members may be of the same political party. The commission must classify all offices and places of employment in the county and no appointment may be made to a position on the classified list except in accordance with the merit system. All examinations must be "practical in character and shall relate to those matters which will fairly test the relative capacity of the persons examined to discharge the duties of the position to which they seek to be appointed, and shall include tests of physical qualifications and health, and when appropriate, of manual skill." The commission certifies one person to the appointing authority; the person is placed on probation for a period fixed by the rules of the commission and may be discharged by the officer having the power of appointment before the expiration of the period of probation, upon assigning in writing his causes to the commission and with its consent. Removals and reductions in grade of compensation may be made by the head of any department for "any cause which will promote the efficiency of the service." Such person must have notice of such action, however, and be given a reasonable time to answer the same in writing. The commission may investigate any such removal or reduction, and its action in approving or disapproving the same is final.

Promotions in Cook county have also been placed on a merit basis. The commission must by its rules provide for promotion in the classified service "on the basis of ascertained merit, examination and seniority in service, and shall provide, in all cases where it is practicable, that vacancies shall be filled by promotion." All examinations for promotion are competitive among such members of the next lower rank as desire to compete for a given position. The commission certifies to the appointing authority the names of not more than three applicants for each promotion having the highest rating.[17] The commission must make an annual report to the board of county commissioners showing its action, the rules in force, and suggestions for improving the administration of the act. The president of the county commissioners may require a report from the commission at any time.

Los Angeles county, California, in 1912 provided for a separate agency to administer the merit system in that county.[18] In its report for 1926 the commission reported the number of employees as 7,909 and the total salary costs of all departments as $12,599,095. For the year ending June 30, 1926, the commission reported that of the 11,345 persons examined, 5,403 or 47.6 per cent passed. The commission exended $45,334 for its work during the year.[19]

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[17] See *Ill. Rev. Stat.*, 1927, ch. 34, secs. 66 (10)–(43).

The charter adopted in Alameda county, California, in 1927, provides for a civil service commission of three persons appointed by the board of supervisors for a six-year-term. The members of the commission receive ten dollars for each meeting of the commission attended. The charter provides that the civil service of the county shall be divided into the classified and unclassified services. It is the duty of the commission to provide for the standardization and classification of all positions in the classified civil service, and to prepare and hold open competitive examinations in order to test the relative fitness of all applicants for appointment in that service. A period of probation not to exceed six months must be provided, and no promotion or appointment is complete before the expiration of this time. The commission is authorized to appoint a chief examiner, and such other employees as it may deem necessary.[20]

Wisconsin, by act of 1917, provides for a civil service commission in all counties of 200,000 population or more.[21] The commission, which is composed of five members, not more than two of whom may belong to the same political party, is appointed by the chairman of the board of supervisors of the county, subject to confirmation by the board. A chief examiner is appointed by the board. Appointments are made by the appointing power from the three persons standing highest on the list as certified by the chief examiner after an examination has been held.

The Wisconsin law also seeks to place promotion in such counties on a merit basis. The chief examiner must devise and introduce a system of efficiency records, based "among other things, upon the quantity and quality of the work performed and the regularity and punctuality of attendance.'' The efficiency records are to be given due weight in the examination of an employee for higher offices or positions to which they naturally lead, ''to the end that such higher offices or positions in the service shall be filled as far as possible by promotion.'' Demotion or dismissal of persons in the classified system can be made only after a hearing before the commission at which the accused may be heard.[22]

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[18] *Gibson v. Civil Service Commission*, 150 Pac. (Calif.) 78 (1915).

[19] *Thirteenth Annual Report, Los Angeles County Civil Service Commission, 1926.*

[20] *Charter of the County of Alameda, California.* (Ratified January 18, 1927.)

[21] This includes only Milwaukee county.

The Michigan legislature, at its 1927 session, passed a law providing for the merit system in all counties of 300,000 population or over.[23] The law provided for a commission of three persons appointed by the board of supervisors, and a system of competitive examinations and promotions.[24] But it has been held to be invalid, as special legislation.[25]

In addition to the use of the merit system in county government in the cases noted, it is also found in several combined city and county governments. These include San Francisco, Denver, St. Louis, and Baltimore. In Denver, the merit system applies only to the fire and police departments, and approximately eight hundred employees are in the classified service.[26] Since in these consolidated city and county governments, city conditions and problems are more important than those of the county, the merit system used therein will not be considered in detail.

The method of administering the merit system for county employees found in New York, New Jersey, and Ohio seems more satisfactory than the use of a separate commission for each county. While it is feasible to have a separate commission for the more populous counties, it is unsatisfactory to depend upon a separate commission for the smaller counties. The number of employees in such counties does not warrant the establishing of a commission with a competent examiner and personnel to administer the law. In such counties, however, the personnel problem is of significance for successful administration and should not be longer neglected. This function should be given to the state commission, which might make use of county officers for the purpose of holding examinations in the county.

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[22] *Wis. Stat.*, 1927, vol. 1, secs. 16.31-16.44. Also see *Civil Service Act and Rules for the Milwaukee County Government*, published by the Milwaukee County Civil Service Commission, 1918.

[23] This applies only to Wayne county (Detroit).

[24] *Public Acts Mich.*, 1927, No. 390.

[25] *Mulloy v. Wayne County Board*, 246 Mich. 632, 225 N.W. 615 (1929).

[26] Letter from Charles W. Cochran, Secretary, Civil Service Commission, City and County of Denver, under date of December 18, 1928.

PAY OF COUNTY EMPLOYEES

Something more is needed than the adoption of the merit system to place the quality of the personnel of the county on an entirely satisfactory basis. In most cases the salaries offered have not been adequate to attract people to enter the county service. An investigation made in New York for the years 1920-21 and 1921-22 by the Special Joint Committee on Taxation and Retrenchment indicated this to be the situation in that state. Of the 193 examinations given by the state civil service commission during this period, the salary offered was $1,000 or less in 16 per cent of the cases. Low salaries were offered in many instances where some training and skill were required. The number of persons taking the civil service examinations was very small, the cause probably being the inadequate salaries. In 86 of the 193 examinations for county positions there were three or less candidates; and in 66 cases there were two or less. Thus there was practically no competition in 44 per cent of the examinations.

The inadequate salaries offered for employment in the service of the counties is found also in other states. The result has been that counties have not been able to attract into their service a satisfactory type of employee. As pointed out in the New York study low wages and low labor costs are far from being synonymous. While the merit system of appointment is a distinct improvement, sufficient salaries must also be provided if the personnel problem is to be met satisfactorily.[27]

Not only are the salaries inadequate, but there is no classification of positions according to the nature of the work, with standardized rates of pay. The salaries received by employees doing similar work show great variation among the counties of the state. Not only is there variation between counties, but there is often a marked difference in the salaries paid in the same county for a similar type of work. There is need of providing not only adequate salaries for county employees, but also some standards of compensation.[28]

[27] *Report of Special Joint Committee on Taxation and Retrenchment*, 1923, pp. 246-7.

[28] *Ibid.*, pp. 238 ff. Also see *Report of the Salary Survey Commission to the Pennsylvania General Assembly* (1929).

WORKMEN'S COMPENSATION LAWS

Counties are not liable for their acts unless clearly made so by statute. They are mere auxiliaries to the state government and partake of the state's immunity from liability; they "are usually denominated quasi corporations, and their principal functions are governmental and political and not private or of a strictly corporate character."[29] It follows from this that counties are not liable for injuries sustained by their employees unless specifically made so by statute. The Supreme Court of California has pointed out that the "sovereign is not bound at all to compensate an individual employee for injuries sustained while in its service, and no right of recovery in favor of such employee exists except by statute . . . The state by virtue of its sovereignty may refuse all redress to its injured servants."[30] This same immunity extends to counties, which are mere governmental agencies and political subdivisions of the state created for governmental purposes.[31]

Several states have made their workmen's compensation acts apply to counties. In Connecticut the act applies to "the state and any public corporation within the state using the services of another for pay";[32] in North Dakota to the "state and all political subdivisions thereof";[33] and in Idaho to employees of the state and of all counties, cities, . . . villages, school districts, drainage districts, highway districts, road districts and other public and municipal corporations" except those who are elected by popular vote or who receive salaries exceeding $2,400 a year.[34] Several other states also make their laws applicable to counties,[35] the specific words of the statutes showing great variation.

[29] *Pfefferle v. Commissioners of Lyon County,* 18 Pac. (Kas.) 506 (1888).

[30] *Miller v. Pillsbury,* 128 Pac. (Calif.) 327 (1912).

[31] See Ch. IV on the Legal Status of the County.

[32] *Gen. Stat. of Conn., Rev. of 1918,* vol. 2, sec. 5388.

[33] *Supp. to Comp. Laws North Dakota,* 1913-1925, sec. 396 a2.

[34] *Ida. Comp. Stat.,* 1919, vol. 2, sec. 6213 ff.

[35] *Va. Code,* 1924, sec. 1887 (8); *S. D. Rev. Code,* 1919, vol. 2, sec. 9490; *Comp. Okla. Stat.,* 1921, vol. 2, sec. 7782 ff; *Cum. Supp. N. J. Stat.,* 1911-1924, vol. 1, 48-1724; *Laws of Del.,* 1927, ch. 193; *Gen. Laws Calif.,* 1923, Part II, Act 4748, sec. 46; *Comp. Laws Mich.,* 1915, vol. 2, sec. 5427; *Barnes' W. Va. Code,* 1923, ch. 15 P, sec. 9; *Wis. Stat.,* 1923, vol. 1, ch. 102.07; *Ga. Code,* 1926, sec. 3154 (1)ff; *McKinney's Consol. Laws of N. Y.,* vol. 10, Bk. 64, sec. 3; *Pa. Stat. Complete to 1920,* sec. 21985; *Rev. Codes Mont.,* 1921, vol. 1, sec. 2862; *Rev. Stat. Mo.,* 1919, vol. 3, sec. 13598; *Mason's Minn. Stat.,* 1927, vol.

The workmen's compensation law of Alabama does not apply to counties, cities, towns, villages or school districts unless they accept the law by filing written notice thereof with the probate judge of the county.[36] In Kansas, the act applies to "county and municipal work . . . which is conducted for the purpose of business, trade or gain." [37] The Supreme Court of Kansas has held that this does "not naturally or properly apply to a county in the administration of its affairs." [38] A county in resurfacing a county road was held not to be engaged in a trade or business within the meaning of the Act.

In addition to making counties liable for injuries to their employees some states provide a state compensation insurance fund to meet such liability. Such a fund is administered in Colorado by the industrial commission.[39] A state compensation fund is also provided in Arizona for insuring employers against liability for compensation.[40]

The benefit of workmen's compensation laws should be extended to county employees in all states. If counties are to attract into their service the highest type of employees, they must extend to them similar opportunities and protection as are offered in private employment. The county should no longer rely upon its immunity from suit in such cases; neither should it be subject to suit in the courts for injuries to its employees, with the resulting large and unfair verdicts by juries because it is a governmental unit, which can consequently afford to pay. A satisfactory workmen's compensation law, applicable to counties, seems to be the proper solution of this problem.

PENSIONS

The question of pensioning public employees has been receiving consideration in recent years.[41] While more progress has been made

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1, sec. 4326; *Rev. Stat. Me.*, 1916, ch. 50, sec. 1, 40; *Burns' Ann. Ind. Stat.*, 1926, vol. 3, sec. 9521; *Codes of Ia.*, 1927, ch. 70, secs. 1362, 1421; *Ill. Rev. Stat.*, 1923; ch. 48, sec. 204-5; *Comp. Stat. Neb.*, 1922, sec. 3029.

[36] *Code of Ala.*, 1923, vol. 3, sec. 7543.

[37] *Rev. Stat. Kas.*, 1923, ch. 44, sec. 505.

[38] *Gray v. Sedgwick Co.*, 165 Pac. (Kas.) 867 (1917).

[39] *Comp. Laws Colo.*, 1921, ch. 80; *Sess. Laws Colo.*, 1923, ch. 203; *Sess. Laws Colo.*, 1925, ch. 182.

[40] *Sess. Laws Ariz.*, 1925, ch. 83.

[41] See *Report of Special Joint Committee on Taxation and Retrenchment*, 1923, pp. 252 ff.; *Special Report on the Cost of Retirement Systems for State and County Employees in Massachusetts*, Bureau of Statistics of Massachusetts, 1911; "Pensions in Public Employment," Report of Pension Com-

in national, state, and municipal governments, provision is now made in a few states for pensions for county employees. The justification for establishing such pensions has been stated as follows: "That in the public service some fair and decent method of providing for the employee who has lost his efficiency because of advancing age and long service is necessary is the almost universal opinion of persons who have had experience in governmental administration. They have reached this opinion not so much from any feeling of sympathy and pity that they may have for the elderly, enfeebled employee, as from the desire to remedy the existing situation and to develop an active, capable force."[42] A pension system has been referred to as an essential part of any constructive program of public employment. "An adequate system of retirement aids in both the recruiting and retention of a desirable type of employee, and it permits the systematic elimination of the aged or disabled without working undue hardship, and the filling of the vacancies thus created by younger and more capable employees. It thus affords a means of increasing both the efficiency and morale of public employment."[43]

The provision made in some of the states for pensions for county employees will now be considered. This is of value as indicating the employees to which such pensions are applicable and the various methods of administration that may be used.

New Jersey provides that whenever any person shall have been employed in any county for at least forty years continuously, and has reached the age of sixty-five, he may, with or without his or her consent, be retired from service. In case of such retirement such person is entitled to a pension for life equal to one half the compensation received at the time of retirement. Employees who have been in the county service for twenty-five years and have reached the age of sixty may be retired by reason of becoming physically or otherwise incapacitated for service to the county, where the disability has developed during his term of service. In this case the

mittee of Nat. Mun. League, prepared by Paul Studensky, 11 *Nat. Mun. Rev.*, 97-124 (1922); for minority report by Albert de Roode, see *ibid.*, pp. 145-46; Lawson Purdy, "Old Age Pensions for Public Servants," 11 *Nat. Mun. Rev.*, 355-57 (122). The best discussion of the subject is Lewis Meriam, *Principles Governing the Retirement of Public Employees* (1918).

[42] Lewis Meriam, *op, cit.*, p. 3.

[43] A. W. Procter, *Principles of Public Personnel Administration* (1921), pp. 19-20.

pension is also one-half the salary at the time of retirement.[44]

Massachusetts counties may, by a majority vote of the electors, establish a retirement system for their employees. The employee contributes not less than one nor more than 5 per cent of his salary to the pension fund, the exact amount to be fixed by the board of retirement. This board which administers the pension fund is composed of three persons—the county treasurer, a person selected by the employees who are members of the association, and a third member selected by the two. Any member who has reached the age of sixty may retire, or may be retired by the board of retirement upon recommendation of the head of the department in which he is employed; and any member who reaches the age of seventy must retire. Upon retirement, he receives a life annuity, payable monthly, the amount varying with the sum of the deposits he has made.[45]

California, by act of 1919, authorized counties to establish a retirement system which is similar to that of Massachusetts. The act becomes effective in any county only on the passage of an ordinance by a four-fifths vote of the board of supervisors. Both the county and the employee make regular payments to the annuity fund, the annuities received by the employee at the time of his retirement being determined by the sum his deposits and the contributions of the county will provide. County employees may retire at sixty and must retire at seventy.[46]

The small number of employees in most counties makes a separate pension fund for them somewhat impracticable. The problem of administration of a pension system in such counties would be difficult. A New York act of 1922 seems to offer the most satisfactory solution of the county pension problem. This provides that any officer or any employee of any county of that state, except such as are able to participate in a retirement system maintained at the expense of a county, is entitled to membership in the New York state employees' retirement system. Such persons may be included, however, only with the approval of the board of supervisors of the counties. Counties were by the act forbidden to create any future retirement systems.[47]

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[44] *Cum. Supp. to N. J. Stat.*, 1911-1924, vol. 1, sec. 48-1900 (B)–1900 (E); *Laws of N. J.*, 1927, ch. 256.

[45] *Gen. Laws Mass.*, 1921, vol. 1, ch. 32, secs. 20-25.

[46] *Gen. Laws Calif.*, 1923, Pt. II, Act 5841.

[47] Birdseye, Cumming, and Gilbert's *Consol. Laws of N. Y.* (Supp. 1924), vol. 14, pp. 83-87.

In some states, the retirement and pension system applies only to a few of the more populous counties. Provision is made in Illinois for a county employees' annuity and benefit fund in counties having a population of more than 500,000 inhabitants (Cook county). A board of trustees consisting of the controller and treasurer of the county and three members who are employees of the county administer the fund. The employee pays into the fund an amount equal to 3¼ per cent of his salary; at the same time the county pays an amount equal to 5¾ per cent of the salary.[48]

Pennsylvania counties having a population of from 1,000,000 to 1,500,000 inhabitants (Philadelphia) must provide a pension system. The employees who desire to participate in such system must contribute one per cent of their salary. Upon reaching the age of retirement, the employee receives 50 per cent of his annual average salary.[49] The pension board which administers the system is composed of the county commissioners, the treasurer, and the controller of the county.

Georgia, by act of 1927, provides for pensions for employees in counties having over 200,000 population. Employees who desire to participate must pay 2 per cent of their salaries to the pension fund. They may retire as a matter of right at the end of twenty five years; or they are eligible to participate at any time in case of injury or permanently impaired health. In either case they receive for life a pension equal to one-half the salary at the time of retirement. The board of trustees which administers the fund consists of the chairman of the commissioners of roads and revenues, the chief of the county police department, and the superintendent of public works of the county.[50]

Pensions for superannuated employees seem to be an important part of a comprehensive personnel program for counties. The provision for payment of a small sum to a pension fund by the employee seems preferable to the payment of the entire amount by the county. Opportunity for retirement at sixty or sixty-five, with compulsory retirement at seventy should be provided. The amount of the pension should be determined by the total deposits paid by the employee and by the county. A state retirement system in which county employees are eligible, upon approval of the county board of supervisors, as in New York, offers a satisfactory means of administering a county pension system.

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[48] *Laws of Ill.,* 1925, pp. 266-318.

[49] *Pa. Stat. Complete to 1920,* secs. 6504-6519.

[50] *Ga. Laws,* 1927, pp. 262 ff.

SUMMARY

Inadequate attention has been given to the selection, retention, and retirement of employees in county government. While, as has been indicated above, some progress has been made, the situation is still unsatisfactory. "The public has suffered from impaired and ineffective service. Public employees have suffered from inadequate rates of pay and other unsatisfactory conditions of public employment. Administrative officers have found it difficult to recruit and retain a competent government personnel."[51] More attention must be given to this problem in the future if the county is to serve as a satisfactory administrative district.

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[51] A. W. Procter, *op. cit.*, p. 9.

PART IV

COUNTY ADMINISTRATION

CHAPTER XII

THE FUNCTIONS OF COUNTY GOVERNMENT

LEGAL ASPECTS OF COUNTY FUNCTIONS

In considering the legal nature and status of the American county it has been pointed out that the county is a quasi corporation, a governmental agency and administrative district of the state.[1] Resulting from this legal status is the limited powers which counties possess; they have only such powers as are expressly given or necessarily implied. The Supreme Court of the United States has held that counties, being created by the authority of the legislature, derive all their powers from the source of their creation, except where the constitution of the state otherwise provides. ''They [counties] have no inherent jurisdiction to make laws, or to adopt governmental regulations, nor can they exercise any other powers in that regard than such as are expressly or impliedly derived from their charters, or other statutes of the State.''[2]

It has been declared to be an ''elementary principle'' that counties have only such powers as are conferred upon them by legislative enactment.[3] Since a county is ''merely a political subdivision of the territory of the state, organized for the convenient exercise, locally, of such powers of the government as may be delegated to it,'' it follows that it ''has no powers except such as are derived from the statutes constitutionally enacted.''[4] The Supreme Court of Kansas has distinguished the powers of counties and municipal corporations. It has held that counties are involuntary corporations, created for governmental purposes and having only such powers as the law prescribes or as arise by necessary implication. Cities, however, being municipal corporations, are held to be not so restricted in their powers.[5] "The county is a quasi municipal corporation, and, as such, can exercise these powers expressly conferred, and only such others as are expressly or fairly implied in, or which are incidental to, the powers expressly granted."[6]

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[1] See Chapter IV.

[2] *Commissioners of Laramie County v. Commissioners of Albany County,* 92 U. S. 307 (1876).

[3] *State v. Superior Court for King County,* 124 Pac. (Wash.) 127 (1912).

[4] *City of Edwardsville v. Madison County,* 96 N.E. (Ill.) 238 (1911). Also see *Board of Commissioners v. Mowbray,* 66 N.E. (Ind.) 46 (1903); *Harrison v. Palo Alto County,* 73 N.W. (Ia.) 872 (1898); *Edwards County v. Jennings,* 33 S.W. (Texas) 585 (1895); *Auerbach v. Salt Lake County,* 63 Pac. (Utah) 907 (1901).

The Supreme Court of Minnesota has also pointed out that, since counties of that state are quasi municipal corporations, "it is elementary that they can exercise only such powers as are expressly granted them by the legislature, or such as are fairly implied as necessary to the exercise of the powers expressly granted."[7] "The implied powers of a county are those only which are necessary to enable it to exercise either its inherent or express powers."[8]

The Supreme Court of Oregon has stated the principle of county powers or functions as follows: "Counties are created for purposes of government and authorized to exercise, to a limited extent, a portion of the power of the state government. They have always been held to act strictly within the powers granted by the legislative acts establishing and controlling them. The statute is to them their fundamental law, and their power is only coextensive with the power thereby expressly granted, or necessarily or reasonably implied from their granted powers."[9] The court pointed out, however, that "when a power is given by statute, everything necessary to make it effectual is given by implication."

While the question of functions may be considered as to the powers of the county as such, it often arises as to the power of a county board or of particular county officers. The same principle of limited construction applies to the county board in the attempted exercise of a new power. The Appellate Court of Indiana has pointed out that "boards of county commissioners are creatures of limited authority, and that they have no powers other than those expressly given by statute, or necessarily implied, in order to carry out the powers expressly given them by statute."[10] It has also been pointed out by the Supreme Court of Montana that the county, as a subdivision of the state, has "certain definite and fixed powers and duties." The members of the county board are the executive officers of the corporation, with powers and duties definitely fixed by statute; "these powers are limited by statute, and any action taken must be justified by the provisions of law defining and limiting the powers conferred."[11]

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[5] *Silver v. Board of Commissioners,* 91 Pac. (Kas.) 55 (1907).

[6] *Brown v. State,* 84 Pac. (Kas.) 549 (1906). Also see *Edwards v. Lewis and Clarke County,* 165 Pac. (Mont.) 297 (1917); *Board of Commissioners of Vance County v. Town of Henderson,* 79 S.E. (N. C.) 442 (1913).

[7] *Grannis v. Board of Commissioners of Blue Earth County,* 83 N.W. (Minn.) 495 (1900); *State v. Smith,* 87 N.W. (Minn.) 775 (1901).

[8] *In re Board of County Commissioners,* 177 N. W. (Minn.) 1013 (1920).

[9] *Fales v. Multnomah County,* 248 Pac. (Ore.) 151 (1926).

The Supreme Court of Arizona has held that in that state "the only powers possessed by boards of supervisors are those expressly conferred by statute or necessarily implied therefrom."[12] A board of county commissioners in Colorado possesses "only such power as is expressly conferred upon it by the constitution or statutes of the state, and such implied power as is reasonably necessary to the proper execution of its express power."[13] In the state of Georgia, "neither counties nor county commissioners possess any powers unless expressly conferred by, or fairly implied from, such statutes as may be passed in relation thereto."[14]

In some cases the courts have indicated an even stricter position, failing to recognize implied powers. Thus it has been held (in Kentucky) that a county "has no right to make any contract or do anything that is not expressly authorized by statute."[15] The Supreme Court of North Dakota has held that, being political subdivisions of the state, they may "speak and act only in the manner and on the matters prescribed by the legislature in statutes enacted pursuant to constitutional authority."[16] And it has been held in California that they have only such authority "as may have been expressly conferred or delegated. Unless we can find, therefore, that the authority has been conferred or delegated to the county, such authority must still be resident in the legislature.''[17]

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[10] *Sullivan v. Board of Commissioners of Miami County*, 149 N.E. (Ind.) 94 (1925).

[11] *State v. McGraw*, 240 Pac. (Mont.) 812 (1925).

[12] *Santa Cruz County v. Barnes*, 76 Pac. (Ariz.) 621 (1904).

[13] *Chose v. Board of Commissioners of Boulder County*, 86 Pac. (Colo.) 1011 (1906).

[14] *Wright v. Floyd County*, 58 S.E. (Ga.) 72 (1907). Also see: *Koger v. Hunter*, 29 S.E. (Ga.) 141 (1897); *Howard v. Early County*, 30 S.E. (Ga.) 880 (1898).

[15] *Adams' Heirs v. McCoy*, 279 S.W. (Ky.) 1103 (1926).

[16] *McHenry County v. Northern Trust Co.*, 200 N.W. (N. D.) 888 (1924); *Divide County v. Baird*, 212 N.W. (N. D.) 236 (1927); *State v. DeGraff*, 255 Pac. (Wash.) 371 (1927).

APPLICATION OF THE PRINCIPLE OF LIMITED POWERS

The question has arisen in Kentucky as to the power of a fiscal court to erect a bridge and collect tolls from those using it. The Court of Appeals held that it is a general rule ''that a county has no right to do anything or engage in any business that is not expressly authorized by the statutes.'' The court was unable to find any statute expressly or impliedly authorizing a county to collect tolls on a bridge; ''it may be best for the counties to have power to erect bridges and collect tolls, at least until they are paid for, but until the Legislature passes a law giving them such a power they have no right to do so.''[18]

It has been held to be beyond the power of counties in Tennessee to make a contract leasing part of the county court-house yard for a period of thirty years for a gasoline filling station.[19] The statute applicable to the question reads as follows: ''Each county may acquire and hold property for county purposes, and make all contracts necessary or expedient for the management, control, and improvement thereof, and for the better exercise of its civil and political powers; may make any order for the disposition of its property, and may do such other acts and exercise such other powers as may be allowed by law.'' The court held that this provision would not justify leasing a part of the court-house yard for a filling station; this was held to be a perversion of the uses for which the premises were acquired.

It has also been held that the quarterly county court in Tennessee may not rent to an abstract company space, for the use of employees of that company, in the register's office. The court found no statutory authority for the lease of space in the county offices; if the power did exist, the lease of such space might lead to serious embarrassment of other members of the public whose right to use the registry rooms and equipment cannot be denied. According to the court, ''county buildings and their equipment are public property held by the county, but in trust for the public use.''[20]

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[17] *Simpson v. Payne*, 251 Pac. (Calif.) 324 (1926).

[18] *Breathitt County v. Hammonds*, 150 S.W. (Ky.) 661 (1912).

[19] *Henry v. Grainger County*, 290 S.W. (Tenn.) 2 (1926).

[20] *Shelby County v. Memphis Abstract Co.*, 203 S.W. (Tenn.) 339 (1918).

The Supreme Court of Iowa has held that a county board exceeded its power in leasing the seventh floor of the court-house to a post of the American Legion.[21] The court pointed out that counties are recognized as quasi corporations, and that it is ''universally held that the board of supervisors of a county has only such powers as are expressly conferred by statute or necessarily implied from the power so conferred.'' The laws of Iowa provide that the board of supervisors is ''to build and keep in repair the necessary buildings for the use of the county and the courts,'' and ''to make such orders concerning the corporate property of the county as it may deem expedient,'' and ''to have the care and management of the property (of the county) in all cases where no other provision shall be made.'' No power is either expressly conferred or clearly implied here to lease any portion of the court-house for a strictly private purpose, and ''in the absence of a legislative grant of such power'' no lease of the kind can be made.

The Supreme Court of Louisiana has held that ''while police juries are the legislative bodies of the several parishes, their powers are limited, and they can exercise no power beyond that which is germane or incidental to the powers which have been delegated to them by the Legislature.''[22] The question before the court was whether a police jury could prohibit the erection of an establishment in the parish using coal, oil, electricity, or any other motor power for the operation of its business without first having secured from the police jury a permit for the establishment of such a plant. After reviewing the powers conferred upon police juries by statute, the court held that the legislature had never delegated to the police juries of the several parishes of that state the power to regulate the location and establishment of any legitimate commercial or manufacturing business in their respective parishes. In refusing a permit to erect an ice factory a police jury exceeded its powers.

The St. Louis Court of Appeals, in considering the question of implied powers, has said: ''The courts are conservative in implying powers not expressly given. One limitation imposed by law on these implications is that no power will be implied to belong to a public corporation, unless it is cognate to the purposes for which the corporation was created.''[23]

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[21] *Hilgers v. Woodbury County,* 206 N.W. (Ia.) 660 (1925).

[22] *American Ice Company v. Police Jury,* 110 So. (La.) 878 (1926).

[23] *Blades v. Hawkins,* 112 S.W. (Mo.) 979 (1908).

MORE LIBERAL ATTITUDE IN SOME STATES

While, in general, the courts take a strict attitude towards the powers of counties, there are some cases in which a more liberal attitude has been indicated. Thus the Supreme Court of Utah has pointed out that ''one of the distinctive features of our republican form of government is the system of local self-government, whereby local governmental affairs are administered by local authorities, and not by agents of the general government.'' The court, in sustaining a large degree of control over finances by county officers, said: ''The idea which permeates our whole system is that local authority shall manage and control local affairs.''[24] The court here seems to be applying to county government the doctrine of the inherent right of local self-government as developed in the field of municipal corporations by Judge Cooley.[25]

The Supreme Court of Oregon has held that county courts in that state, representing the county, have power and authority to settle and compromise with a taxpayer a controversy as to assessment, where there is grave legal doubt in regard to the validity of the assessment, in that the taxpayer has no knowledge of the assessment in time to present the matter to the board of equalization.[26] The general power of the county as a body politic to sue and be sued and to make all necessary contracts, and do all other necessary acts relative to the property and concerns of the county, by a fair interpretation, includes authority for the county court, as its agent, to prevent litigation by a compromise and settlement of disputed matters of the county.

The constitution of California authorizes any county or city to make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with the general laws.[27] The Court of Appeals of California (third district), has held that ''under this direct grant, any such county, city, town, etc., may make and enforce within its limits all such police, sanitary, and other regulations as may be deemed necessary for the health, comfort, and happiness of its inhabitants. The only limitation upon this power prescribed by the constitution is that regulations so made shall not conflict with general laws.''[28] The courts of California have held that the manufacture and sale by a county, without profit, to its residents of poisoned barley for use in exterminating ground squirrels was constitutional as a reasonable exercise of the police power, and not the unlawful engaging in private competitive commercial business.[29] While a county may not levy taxes for the purpose of establishing or operating a private commercial business, ''the practice here engaged in cannot be regarded as a private commercial business in view of the fact that financial profit to the county was not, in fact, its object or result.'' After considering the provisions of the constitution and the laws of the state, the court held that ''when a county, asserting its recognized authority, undertakes to suppress what it is free to regard as a public evil, it may adopt such measures, having reasonable relation to that end, as it may deem necessary in order to make that action effective.'' It could not be said, according to the court, to be an unreasonable exercise of the police power for the county to aid its landholders in combatting a common nuisance. It has been held, however, that counties in California have no power to operate a private competitive commercial business, such as a cement plant to manufacture and sell cement in the open market in competition with others.[30]

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[24] *State v. Eldredge,* 76 Pac. (Utah) 337 (1904). Also see *State v. Standford,* 66 Pac. (Utah) 106 (1901).

[25] *People ex rel. Le Roy v. Hurlbut,* 24 Mich. 44 (1871).

[26] *Jackson County v. Ulrich,* 244 Pac. (Ore.) 535 (1926).

[27] *Const. of Calif.,* Art. XI, sec. 11. cf. *Const. of Mich.,* Art. VIII, sec. 8.

Acting under the provision of the California constitution noted above, a county of the state passed an ordinance prohibiting the transportation into or through the county of liquor without a label showing its kind and quality and the names and addresses of the consignor and the consignee. The District Court of Appeal of that state, in sustaining this ordinance, held that ''when a county, asserting its recognized authority, undertakes to suppress what it is free to regard as a public evil, it may adopt such measures having reasonable relation to that end as it may deem necessary in order to make that action effective.''[31]

These cases seem to be exceptions to the general rule, that the courts tend to place a strict interpretation upon the powers of counties.[32] Where the power exists, however, the courts refuse to interfere when a question of discretion is involved. "Being small bodies, close to the people, and clothed with both legislative and executive functions, police juries are vested with large discretion in their sphere of action." [33] The courts refuse to interfere except for the prevention of fraud, oppression, or gross abuse of power "as such intermeddling would be an invasion by the judiciary of the domain of other departments of government, in violation of express constitutional prohibitions." [34]

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[28] *Ex parte Junqua,* 103 Pac. (Cal.) 159 (1909).

[29] *Farley v. Stirling,* 233 Pac. (Cal.) 810 (1925).

[30] *City of Los Angeles v. Lewis,* 167 Pac. (Cal.) 390 (1917). Also see *Wood v. Floyd County,* 131 S.E. (Ga.) 882 (1926.)

[31] *People v. Velarde,* 188 Pac. (Cal.) 59 (1920).

TAXATION FOR A PUBLIC PURPOSE

Another limitation upon counties in undertaking new functions is that they may levy taxes only for public purposes.[35] The Supreme Court of Washington has held that under the constitution of that state counties are prohibited from incurring indebtedness for other than strictly county purposes, and that a statute of the state was invalid which provided for grants from county commissioners to pay the expenses and premium awards of an agricultural fair association.[36] The Montana Farm Loan Act of 1915, providing for loans by counties and constituting the county a statutory guarantor of loans made by it, was held by the Supreme Court of that state to be contrary to the provisions of the state constitution providing that taxes imposed and collected by a county may be expended only for public purposes.[37] This principle has thus served as a check upon the extension of county functions.

In most cases, however, the courts have taken a liberal attitude in determining whether taxation for a proposed county function is for a public purpose. The Supreme Court of Nebraska has held that counties may appropriate money for the erection of suitable buildings and a county exhibit at an exhibition to be held in the city of Omaha. The court was unwilling to say that this expenditure was not for a public purpose. "To justify a court in declaring a tax invalid on the ground that it was not imposed for the benefit of the public, the absence of a public interest in the purpose for which the money is raised by taxation must be so clear and palpable as to be immediately perceptible to every mind.''[38] The Supreme Court of Idaho has held that a statute authorizing county commissioners to levy a tax for the purpose of creating a fund to collect and maintain an exhibit of the products and industries of the county at any domestic or foreign exhibit is constitutional. The object of the law was to encourage immigration and to increase trade in the products of the state.[39]

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[32] *Wood v. Floyd County*, 131 S.E. (Ga.) 882 (1926); *Wallace v. Commissioners of Madison County*, 281 S.W. (Texas) 593 (1926); *Scaling v. Williams*, 284 S.W. (Texas) 310 (1926); *Moore v. McLennan County*, 275 S.W. (Texas) 478 (1925).

[33] *Williams v. Police Jury of Concordia Parish*, 107 So. (La.) 126 (1926).

[34] See Chapter IV for more extended consideration of this question.

[35] Thomas M. Cooley, *The Law of Taxation* (4th ed.), vol. 1, ch. 4, sec. 119.

[36] *Johns v. Wadsworth*, 141 Pac. (Wash.) 892 (1914).

[37] *State v. Stewart*, 161 Pac. (Mont.) 309 (1916).

An expenditure of $500,000 by a county for a ''Victory Hall,'' to be used exclusively by associations of veterans, has been held, by the Supreme Court of California, to be a public purpose. The court considered the object of the expenditure to be to promote patriotism; and this was held to be ''not only a public purpose but the most elemental of public purposes.''[40]

While this principle that taxes may be levied only for a public purpose has served as an effective check upon the performance of certain functions by counties, in general the courts take a liberal attitude, giving great weight to the determination of the county authorities as to whether an undertaking is a proper county function and the expenditure of money is for a public purpose.

Some state constitutions make general grants of powers to counties. In California and Washington, counties are authorized to make and enforce within their limits such local, police, sanitary, and other regulations as are not in conflict with general laws.[41] Counties, incorporated cities, and towns in Idaho may make and enforce within their limits all such local police, sanitary and other regulations as are not in conflict with its charter or with general laws.[42] In Kansas, ''the legislature may confer upon tribunals transacting the county business of the several counties, such powers of local legislation and administration as it shall deem expedient.''[43] Parishes in Louisiana have such powers as may be prescribed by law.[44]

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[38] *State v. Cornell,* 74 N.W. (Neb.) 59 (1898).

[39] *Bevis v. Wright,* 175 Pac. (Ida.) 815 (1918).

[40] *Allied Architects Assoc. v. Payne,* 221 Pac. (Calif.) 209 (1923). In Texas the expenditure of money by counties for tick eradication and for offering bounties for killing wolves and other wild animals which prey upon stock have both been held to be for a public purpose. *Neal v. Boog-Scott,* 247 S.W. (Texas) 689 (1923); *Weaver v. Scurry County,* 28 S.W. (Texas) 836 (1894).

[41] *Const. of Calif.,* Art. XI, sec. 11; *Const. of Wash.,* Art. XI, sec. 11.

[42] *Const. of Idaho,* Art. XII, sec. 2.

The constitution of Michigan empowers the legislature to confer upon the boards of supervisors of the counties of that state, ''such powers of a local, legislative and administrative character as they may deem proper.'' The state legislature has authorized county boards, in addition to their enumerated powers, ''to pass such laws, regulations and ordinances relating to purely county affairs as they may see fit, but which shall not be opposed to the general laws of this state.'' Such laws do not take effect until they have been approved by the governor. The board may pass such measures over the governor's veto by a two-thirds vote.[45]

In the absence of constitutional provisions dealing with the powers of counties, the legislature may, by statute, confer powers upon counties as administrative districts and agencies of the state, subject to constitutional limitations. At its 1926 session the Virginia legislature passed an act authorizing the board of supervisors of counties having a population of more than three hundred inhabitants per square mile to install a publicly owned water supply system or systems for the respective magisterial districts of such counties and provided for their construction and financing.[46] The Supreme Court of Virginia, in upholding the validity of this law, pointed out that the ''county is a political subdivision of the state for the purpose of civil administration of such powers as may be delegated by the state.'' The court went on to say that ''the legislature has the right to grant to any county any functions looking to the advancement of the public welfare not prohibited by the state constitution.''[47]

NATURE OF COUNTY FUNCTIONS

Since the courts hold that the county is a quasi corporation, an agency and administrative district of the state, it follows that the functions performed by the county are state functions administered by and through counties.[48] Most of the functions performed by the county are state functions, and of state-wide concern; but the degree of general interest varies with different functions. In the case of some functions performed by the county, the people of the county have a more direct interest in their efficient administration than in the case of others, and in their performance the county takes on more of the aspect of an area of local government than as an agent of the state.

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[43] *Const. of Kas.*, Art. II, sec. 21.

[44] *Const. of La.*, Art. XIV, sec. 1.

[45] *Comp. Laws of Mich.*, 1915, vol. 1, sec. 2274 (13).

[46] *Acts of the Assembly of Virginia*, 1926, ch. 284.

[47] *Kirkpatrick v. Board of Supervisors*, 136 S.E. (Va.) 186 (1927).

[48] See John F. Dillon, *Municipal Corporations* (5th ed.), vol. 1, sec. 35.

It seems impracticable, however, to attempt a rigid classification of the functions performed by the county on the basis of functions of state administration and functions of local administration. The first difficulty lies in the fact that some functions have a dual nature, as in the case of the maintenance of law and order. While county police officers are engaged primarily in the enforcement of state law, the protection of the life and property of the people of the county is so closely involved that this may also be considered a function of local administration. While the care and maintenance of highways has formerly been looked upon as largely a matter of local interest, there has recently been a tendency for the state to assume a more important rôle in this activity, so that it now approaches more nearly a function performed by the county as an agent of the state. This is becoming more true with the development of modern methods of transportation and state-wide systems of highways. Another difficulty in classifying county functions as those of state and those of local affairs results from different conditions in different states, so that what may be true of one state would not hold to an equal degree for other states.[49]

There seems, however, to be a tendency for the older functions to become more largely functions performed by counties as administrative districts of the state. Thus, while the preservation of public health, the relief of the poor, and the provision of public education might formerly have been considered to be largely functions of local administration, there has been a tendency towards increased state supervision over the county in the performance of these functions which emphasizes their state rather than their local character.[50]

Some of the newer functions now being undertaken by the county may be considered as functions of local administration, primarily for the benefit of the people of the county, rather than matters of state-wide concern. This may be said of county parks, libraries, and probably to a less degree of county hospitals. County aviation fields, the establishment of special vocational schools, the furnishing of seed grain to farmers, the establishment of county farm bureaus, and the erection of memorials to soldiers are some of the newer functions which seem to be more in the nature of local functions performed by the county as an agency of local self-government than state functions performed by the county as an administrative district of the state. This is also indicated by the fact that these functions are optional with the counties.

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[49] They are so classified by H. G. James, *Local Government in the United States*, p. 195.

[50] See Chapter VI.

Another question which arises in connection with county functions is as to which functions are performed directly by the county and which by the townships or other subdivisions. Here again, it is impracticable to make any hard and fast classification, since the distribution will vary according as the county has or has not township organization, and even in counties with township organization there are important differences in the various states, and even between different counties in the same state. In some cases functions formerly left in the control of townships and other subdivisions have been transferred to the county. This has taken place in the case of those functions in respect to which it has been found that a larger area will conduce to more satisfactory and efficient administration. The county unit plan of school administration; the county unit plan of highway administration; and the increased use of county rather than township officers for the assessment of property and the collection of taxes illustrate this type of redistribution of functions.

OLDER FUNCTIONS PERFORMED BY THE COUNTY

County powers and functions are not uniform among the states; and the general importance of the county varies considerably from state to state. Everywhere, and above all, the county is a district for the administration of justice. Courts of general civil and criminal jurisdiction are held at infrequent intervals in each county. And while the presiding judges are often selected from a larger district, the administrative officers of the courts (clerical and executive) are regularly county officers. In connection with the administration of justice, court-houses and jails are provided and maintained in each county. In all of the states, too, the county is to some extent a police and militia district. In almost every state the county is the district for probate administration and the public record of land titles.

Outside of the New England states, the county has important functions in the construction and maintenance of roads and bridges, and sometimes of other public works. In most states it is the district for the administration of poor relief. Generally there is some county school officer, and in many of the Southern states and some others the county is the primary unit for school administration. In some states it is a district for health and sanitary administration.

Almost everywhere the county is a district of considerable importance in finance administration. It levies taxes for its own purposes. In most states it not only collects its own taxes but also acts as agent for the collection of state revenues, and sometimes also for towns and other districts; and in the states of the South and far West, and to some extent in other states, it is a district for the assessment and collection of taxes.

In all of the states the county is an important district for election purposes. Most county officers are elective; the county is always a unit for canvassing the returns for state officers; and in most states it is the district for electing members of the state legislature. The position of the county as an election unit is indicated by the importance of the county committee in the party organizations of many states, and by the centering of campaign activity within this district.

To some extent the county may be said to exercise legislative power. The county board is usually given power to enact police regulations in enumerated classes of cases, but no general power to enact laws or ordinances is vested in any county authority.

NEWER COUNTY FUNCTIONS

In several states, new functions are being undertaken by counties which may be considered matters of local government rather than of general state interest. They are services in which the people of the particular county have a peculiar and direct interest rather than being of concern to the people of the whole state. As the state takes over the direct administration of those matters of state-wide concern, or as it assumes a more direct control over their administration, new functions of more particular local concern are being developed by the county.

Some of these newer functions are discussed in later chapters: for example, county hospitals in the chapter on health administration; county libraries, and also the maintenance of schools for special types of instruction, in the chapter on educational administration. At this time attention may be called to some other recent developments in county functions.

The maintenance of parks is one of the newer county functions. The first county park in the United States was established in Essex county, New Jersey, in 1895; county parks were next established in Hudson county, New Jersey, in 1903, and in Cook and DuPage counties in Illinois in 1915. Since that time the movement has spread until by 1928 there were about forty-five such parks in the United States.[51] The most extensive park projects are those carried on by Cook county, Illinois, and Westchester county, New York.

Various methods are used for controlling and supervising county parks. They may be under the control of the county board of supervisors, as in Los Angeles county, California, and Cook county, Illinois; they may be under an elected board, as in Clark county, Washington, and Santa Clara county, California; they are under the control of a board appointed by the county board in some cases, as in Erie county, New York, and Marathon county, Wisconsin; and in Essex, Hudson, and Union counties, New Jersey, they are under the control of a board appointed by the courts. Still other methods of management are employed.

The methods used to finance county parks also show great variation. In some cases they are financed out of the general funds of the county; in some states, provision is made for a special tax levy; and in Rockingham county, North Carolina, they are supported by membership dues and contributions of interested citizens.

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[51] In a study published by the United States Department of Labor in 1928 the following thirty-three counties were listed as having county parks: Bergen, Camden, Essex, Hudson, and Union counties, New Jersey; Berkeley county, West Virginia; Clark and Grays Harbor counties, in Washington; Clatsop county, Oregon; Cook and DuPage counties, Illinois; Erie and Westchester counties, New York; Guilford and Rockingham counties, North Carolina; Harris and Tarrant counties, Texas; Henry county, Indiana; Humboldt, Kern, Los Angeles, Orange, and Santa Clara counties, California; Jackson, Muskegon, and Wayne counties, Michigan; Jackson county, Missouri; Marathon and Milwaukee counties, Wisconsin; Orange county, Florida; Pueblo county, Colorado; and Ramsay county, Minnesota. Converse county, Wyoming, had a park which was acquired by gift rather than purchase as in the case of the other county parks listed above. Twelve other counties were reported as having parks in 1928 but the data were not sufficient to include in the report. ''Park Recreation Areas in the United States,'' *Bulletin of the United States Bureau of Labor Stat.*, No. 462 (Washington, 1928).

Counties in Pennsylvania have been empowered to designate and set apart for use as playgrounds, play fields, gymnasiums, public baths, swimming pools, or indoor recreation centers, any land or buildings owned by the county and not dedicated or devoted to other public use. The county commissioners may acquire lands or buildings for such purposes by gift or purchase, or may lease land or buildings for temporary use.[52] Counties in Florida have also been authorized to provide recreation centers.[53]

Illinois counties having over 500,000 population (Cook county) may establish and maintain a municipal hall and operate the same and control or regulate its use, and such a county and any municipality therein may arrange, upon such terms and conditions as they may agree upon, for the joint establishment and maintenance of such a hall.[54] Following the World War, counties have been given the power in several states to construct memorials, armories, and public buildings in memory of the men who lost their lives.[55] And in Nebraska, counties may expend money for the purchase of sites and the erection of monuments or markers for the purpose of identifying places of local historic interest.[56]

In several states, counties have now been authorized to establish and maintain airports, including Pennsylvania, Michigan, Indiana, North Carolina, Texas, Idaho, Wyoming, and California.[57]

County aid to agricultural interests has been given in various ways, and new methods have been developed in recent years. Early in the nineteenth century county fairs began to be held; and with the aid of county and state funds they became general and important institutions for many years. More recently the character and influence of these fairs have declined, in some states public funds have been discontinued, and in many places the local fairs have been abandoned. Farmers' institutes, of a more definitely educational character, were begun in Illinois and Iowa about 1870; and have been established in other states.

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[52] *Pa. Stat. Complete to 1920,* secs. 15822-15828.

[53] *Fla. Cum. Stat.,* 1925, ch. 32A.

[54] *Laws of Ill.,* 1927, p. 379.

[55] See for example: *Laws of N. M.,* 1927, ch. 184; *Laws of N. D.,* 1927, ch. 117.

[56] *Comp. State Nebr.,* 1922, secs. 6812-16.

[57] *Pa. State, Supp. 1928,* secs. 460-al–a5; *Public Acts Mich.,* 1927, p. 372; *Sess. Laws Wyo.,* 1927, p. 74; *Codes and Gen. Laws, Calif., Supp. 1925-27,* sec. 4056c; *Burns' Ind. Stat.,* 1926, vol. 2, sec. 3838 ff.; *Public Laws N. C.,* 1929, p. 64; *Sess. Laws Idaho,* 1929, ch. 106; *Texas Laws,* 1929, p. 614.

Giving aid to needy farmers to enable them to secure seed grain and feed is now a county function in a few states. Counties in North Dakota were authorized in 1909 to aid needy farmers in securing seed grain. This is done where the crops for any preceding year have been a total or partial failure by reason of drouth, hail, or other cause. Applicants must sign an agreement to pay the cost of any grain furnished.[58] Similar laws have been passed in Minnesota, Montana, and Kansas.[59] The Kansas Act, which was passed in 1927, authorized counties in the western part of the state, where drought existed during the previous year, to purchase and distribute seed grain, and also feed for horses and mules, to farmers who were otherwise unable to obtain such grain and feed. The act specified the conditions and methods under which the seed and feed were to be procured and distributed by the county. Obligations, bearing interest at six per cent, were to be given by those who received the grain.

The constitutionality of such legislation has been upheld by the Supreme Court of Montana. Since limited to ''needy farmers who are unable to procure seed,'' the court held such an act to be for a public purpose,—it was to aid persons who otherwise would become paupers, dependent on the county for support.

An important and widespread recent movement for the improvement of agriculture has been by the provision of trained county farm agents and bureaus.[60] These are maintained by the coöperation of the United States department of agriculture, state agricultural colleges, county authorities, and voluntary associations. Begun in 1904 in the Southern states, and in the Northern states some years later, by 1914 there were more than 900 county advisors. In 1909, Mississippi authorized county boards to make grants of money for such county advisors; New York and North Dakota followed in 1912; and similar action has been taken in many other states.

The Smith-Lever Extension Act of 1914 provided larger grants from national funds, and placed the work on a more systematic basis. By 1924, county farm advisors were operating in 2,084 counties, in all of the states—five states, Connecticut, Delaware, Maine, Maryland, and New Hampshire having these agents in every county. County agents are chosen through the joint action of state agricultural colleges and county advisory committees. About a third of the cost comes from the United States, a fourth from state funds, about 30 per cent from counties, and the balance from fees of local associations and other sources.

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[58] *Comp. Laws of N. D.*, 1913, vol. 1, secs. 3471-3490. Amended at the special session of 1918.

[59] *Supp. Minn. Stat.*, 1917, sec. 745-4; *Rev. Codes Mont.*, 1921, vol. 1, secs. 4640-79; *Laws of Kas.*, 1927, ch. 174.

[60] M. C. Burritt, *The County Agent and the Farm Bureau* (New York, 1922); Wm. A. Lloyd, ''County Agricultural Agent Work under the Smith-Lever Act, 1914-1924,'' U. S. Dept. of Agriculture, Misc. Circular No. 59 (1926).

In some states the statutes merely authorize the county board to give aid to such organizations in case it sees fit. Thus in Missouri the county court, "for the purpose of promoting the public welfare by assisting in the general betterment of farm and home practices and conditions," may appropriate out of the general funds of the county such sums as it may deem proper for the support of any farm organizations. In other states, however, the giving of such aid is mandatory. In Kansas, boards of county commissioners must contribute not less than $1,200 per year to assist in the payment of the salary of the county agricultural agent and the expenses of the farm bureau in counties where such a bureau is organized having a membership of 25 per cent of the bona fide farmers of the county, or as many as two hundred and fifty farmers.[61]

Other activities are indicated by a variety of more specialized officials found in different states, such as county veterinary inspectors, live stock agents, tick eradicator inspectors, pest inspectors, and horticultural commissioners. A number of states have county fish and game officers. Several states have county weighers or inspectors of weights and measures, oil and gas inspectors or mine inspectors.[62]

Counties are also extending their activities in the field of public works. Drainage, flood protection and irrigation works are largely provided by special districts; but several states make definite provision for county drains and ditches. Ohio authorizes county sewers and water supply, New Jersey lighting plants, and Florida county cold storage plants. Several states have provided for county planning agencies.

In some of the Southern and Western states counties have published descriptive books or pamphlets setting forth the resources and advantages of the county. Laws authorizing a tax for this purpose have been enacted in California, Nevada, Montana, and Kentucky.[63]

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[61] *Supp. to Mo. Stat.*, 1927, p. 781; *Rev. Stat. of Kas.*, 1928, sec. 2-601. Cf. *Burns' Ind. Stat.*, 1926, secs. 7045 ff.; *Mason's Minn. Stat.*, 1927, vol. 1, sec. 668.

[62] Cf. *State Law Index*, 1925-26.

Measured by the relative distribution of local administration between the county and minor districts, the county is of most importance in the Southern states and the Mountain and Pacific Coast states of the West. By the same tests, it is of least importance in New England, where the county is weakened by the centralization of the judiciary on the one hand, and the importance of town government on the other. In the Middle Atlantic and North Central states it occupies an intermediate position.

But if a quantitative standard of the intensity of county administration is applied, the results are somewhat different. Judged by the per capita rate of expenditure, the county is of much the greatest importance in the Western group of states. Second rank is taken by the North Central and Middle Atlantic states, while by this standard the Southern states fall in the third group. In three of the New England states, Massachusetts, New Hampshire, and Maine, county expenditures are of some importance; in Connecticut and Vermont, county finances are almost negligible; while in Rhode Island county expenses are included in the state budget.

REDISTRIBUTION OF COUNTY FUNCTIONS

It has been found that the county is too small a unit for the efficient and satisfactory performance of certain functions. This has led to a tendency to place the administration of such functions in the control of some larger area. In most cases this has been done by the state assuming the performance of the function which was formerly under local control. One phase of this tendency is the development of state charitable institutions for certain classes of dependents and defectives, as the feeble-minded and the insane. The work of state boards of equalization and tax commissions in valuing property is also of this nature. The more recent establishment of state police forces is another illustration of the same tendency.

[63] *Stat. and Amendments to Codes, Calif.*, 1927, ch. 389, sec. 33. Cf. *Rev. Laws Nev.*, 1919, vol. 3, p. 2701; *Rev. Codes Mont.*, 1921, vol. 1, sec. 4470; *Carroll's Ky. Stat.* 1922, sec 1840. One Virginia county published a manual of this kind in 1888, and four others in 1907, R. A. Sawyer, *County Government, Including County Publications* (1915).

In some cases the redistribution of functions has not meant a transfer from the county to the state, but from the county to some larger area of local administration. Provision is made in several states for the joint performance of certain functions by adjoining counties. Two or more counties in Michigan may, by a majority vote of the board of supervisors of each, and the approval of the state health commissioner, unite to form a district for maintaining a health department. Counties in Michigan and Minnesota, and Texas counties having less than 15,000 population, may erect hospitals for their joint use.[64] Two or more counties in California may unite to create a highway district. Two or more counties in Kansas may form an engineer district for the purpose of securing a competent road builder or engineer. Pennsylvania, Michigan, South Dakota, and Oregon also provide for the coöperation of counties on road building projects. Provision is made in some states for the coöperation of counties in maintaining joint poor farms, high schools and county libraries.

These provisions indicate some recognition of the inadequacy of many counties, as now constituted, to meet the needs for public services, and the desirability of larger areas of administration. The same considerations would seem to apply to other functions, and point to the need of larger counties, discussed in a previous chapter.[65]

The creation of special local districts has also had its effect upon the functions performed by the county. Some county functions have been transferred to these new governmental agencies. The creation of special road, sanitary, health, and drainage districts indicates this tendency to transfer county functions to special districts.[66]

The question arises whether the county remains the most satisfactory area of administration for the functions performed by it or if a further redistribution of functions is desirable? This cannot be answered by a simple generalization; the answer depends upon the function under consideration and the situation in the particular state as to the existing distribution. Further consideration will be given this problem of redistribution of local functions in later chapters. In this direction seems to lie one possible method for improving unsatisfactory conditions in county government.

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[64] See Chapter XV on Health Administration.

[65] See Chapter V on Constitutional Provisions and Powers of the County.

[66] See Chapter XXII.

CHAPTER XIII

THE ADMINISTRATION OF JUSTICE

Among the most important functions of the county are the administration of justice and the enforcement of state law. In a previous chapter some account has been given of the county officers engaged in these matters. In this chapter will be considered some of the important problems which have arisen, and methods adopted or proposed for their improvement.

Attention will first be given to the agencies for the maintenance of peace and order, and for preventing violations of the law. Next will be considered the preliminary stages of judicial proceedings and the conduct of trials. This will be followed by a discussion of more general problems of judicial organization and means of securing more effective results.

POLICE PROBLEMS

County machinery for law enforcement has not been satisfactory, and with the changed conditions of the present century this has become more evident. Lynchings in Western states under frontier conditions and of negroes in Southern states have been due in part to unsatisfactory law enforcement agencies. Recent disturbances in mining communities have shown the need for a more effective police system in the rural sections of the country. The automobile and good roads have tended to accentuate this problem; as is shown by the increasing number of bank robberies in rural sections.

Some of the difficulties of the present situation arise from the lack of a satisfactory organization of the sheriff's office. Few qualifications are required for sheriffs, and in practice they seldom have any special training or experience;[1] while the limitation in many state constitutions to one consecutive term prevents them from acquiring experience. The fee system operates to divert their interest from the active work of preventing crime and detecting and arresting criminals. No adequate force of deputies or assistants is provided, and even where systems of qualifying examinations are applied to other branches of the county service, deputy sheriffs are exempt from formal requirements.

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[1] In 1925, of 59 sheriffs in Missouri, 24 had been farmers, and most of the others had been in various kinds of business; six had been policemen and two penitentiary guards. R. Moley, *Politics and Criminal Prosecution* (1929), p. 106.

Some states have attempted to deal with these problems by changes in the local agencies. The prosecuting attorney in Ohio may appoint a secret service officer whose duty it is to aid in the collection and discovery of evidence to be used in the trial of criminal cases and matters of a criminal nature. Such officers serve at the pleasure of the prosecuting attorney; their salary is fixed by the judge of the court of common pleas.[2] New York, Pennsylvania, and other states also make provision for county detectives.[3] County motorcycle patrolmen have been provided in some states, especially to deal with traffic problems.

Provision is made in several counties in South Carolina for the appointment of rural policemen. It is their duty to patrol and police the county, especially the rural areas, and to prevent and detect crime. Such police are provided for a county by special legislative act, so that there is no uniformity as to the method of their selection: in some cases they are appointed by the county board; in others by the governor upon the recommendation of a majority of the members of the General Assembly from the county; and in others they are appointed by the county sheriff.[4]

Difficulties also arise from the highly decentralized system of administration under which the enforcement of state law is mainly placed in the hands of locally elected officials, subject to little or no state supervision. Where strong local sentiment is opposed to certain state laws, locally elected officials are likely to be lax, indifferent or even hostile to their enforcement; and a wide range of variation is likely to appear in the application of such laws. It seems clear that there should be a closer correlation between law making and the means for law enforcement.

A partial remedy for this situation may be secured by the enlargement of the districts for selecting law enforcing officers, in order to secure constituencies more representative of the state. Under such a plan it may be hoped that cases where local sentiment is at marked variance with that of the state as a whole might be minimized. Some states now elect judges of general trial courts and prosecuting attorneys for larger districts than the county. But even an extension of this policy to other states would leave need for a more effective system of state supervision.

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[2] *Page's Ohio Gen. Code,* vol. 1, sec. 2915-1.

[3] *Pa. Stat. Complete to 1920,* sec. 9096; *ibid.,* sec. 7419; Birdseye, Cumming and Gilbert's *Consol. Laws of N. Y.* (2d ed.), vol. 2, p. 1531; *ibid.,* vol. 10, p. 286.

[4] See *Acts of S. C.,* 1917, pp. 94, 111, 123, 202, 209, 211, 365, 376.

A number of states having some degree of state supervision over local agencies, have provided for a more effective organization, or have established bodies of state police.

STATE SUPERVISION

Some measure of state control over local law enforcement officers is provided in a number of states by provision for the removal of such officers by the governor. In addition to the power of removal by impeachment, or in some states on an address by the legislature, and the general power of removing county officers by the governor, as in Michigan, Minnesota, and North Dakota, several states make special provisions for the removal of prosecuting attorneys, sheriffs, coroners and sometimes other officials.

Thus in New York, by constitutional provision, the governor may remove district attorneys and sheriffs, provided a copy of the charges is furnished and an opportunity to be heard is given; and a similar provision applies to district attorneys and coroners in Wisconsin.[5]

In Nebraska, Wyoming, Tennessee, and Oklahoma the governor may direct the attorney general or the county prosecuting officer to institute proceedings for the removal of county officers; and in Nebraska and Wyoming he may suspend such officers pending trial.[6]

Prosecuting attorneys may be removed by the state legislature in Connecticut, Tennessee, and Washington.[7] In Maryland they may be removed by the legislature for incompetence, wilful neglect of duty or misdemeanor in office, and may also be removed by a two-thirds vote of the Senate on recommendation of the attorney general.[8] In Arkansas and Oregon prosecuting attorneys may be removed by the governor for good cause, on joint address by two-thirds of the members elected to each house of the legislature.[9]

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[5] *Const. of N. Y.*, Art. X. sec. 1; *Const. of Wis.*, Art. VI, sec. 4; *Wis. Stat.*, 1923, vol. 1, sec. 17.09.

[6] *Laws of Neb.*, 1923, ch. 116; *Wyo. Comp. Stat.*, 1920, secs. 1398-99; *Ann. Code of Tenn.* (County ed.), vol. 1, secs. 1135a7; *Comp. Okla. Stat.*, 1921, vol. 1, secs. 2414, 2422.

[7] *Const. of Conn.*, Amendment 7; *Const. of Tenn.*, Art. VI, sec. 6; *Const. of Wash.*, Art. IV, sec. 9.

Sheriffs may be removed by the governor in Ohio and Kansas for allowing a prisoner to be lynched if they have not used reasonable efforts to protect his life. In Illinois the governor must remove a sheriff who allows a prisoner in his custody to be lynched. Wilful neglect on the part of a sheriff in Alabama to perform any duty required of him by law subjects him to impeachment before the supreme court of the state.[10]

Kentucky in 1919 adopted a constitutional amendment which authorized the legislature to provide the manner of removal of any sheriff, jailer, constable or peace officer for ''neglect of duty.'' An act of 1924 provided that any sheriff, jailer, constable, or peace officer who is guilty of gross misconduct in office, bribery, gross neglect to enforce the laws of the state, gross immorality or habitual drunkenness, shall be deemed guilty of neglect of official duty and shall be removed from office by the governor. A hearing in the case must be held before the governor, at which the officer sought to be removed has the right to appear and be represented by counsel. Provision is made for an appeal from the order of removal to the courts.[11]

In several cases removals of sheriffs have brought questions as to the scope of the governor's power before the courts. In New York, Michigan and Minnesota the courts have declined to review the governor's action in cases where the charges were largely of misconduct before the existing term of office, and where the governor conducted the hearing in person when the statute provided that he ''*may*'' direct the Attorney General to make an investigation.[12] In Wisconsin, where a sheriff was removed because he declined to recognize the governor's pardon in a case of civil contempt, it was held that the governor's power of pardon did not extend to such cases and that removal for this reason was unauthorized. In Kentucky, it has been held that a removal for drunkenness is not authorized by the constitutional provision authorizing removals for "neglect of duty."[13] In 1926, the governor of New York removed the district attorney and sheriff of Saratoga county, after an investigation by a special commissioner, for allowing wide open gambling at Saratoga Springs.[14]

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[8] *Const. of Md.*, Art. V, sec. 7.

[9] *Const. of Ark.*, Art. XV, sec. 3; *Const. of Ore.*, Art. VII, sec. 20.

[10] *Page's Ohio Gen. Code*, vol. 1, secs. 2855-1 and 2; *Rev. Stat. of Kas.*, 1923, sec. 21-1007; *Ill. Rev. Stat.*, 1923, ch. 38, sec. 542; *Code of Ala.*, 1923, vol. 4, sec. 10196.

[11] *Acts of Ky.*, 1924, ch. 49.

[12] *In re Guden*, 171 N.Y. 529 (1902), 64 N.E. 451; cf. *People v. Ahearn*, 196 N.Y. 281 (1909), 89 N.E. 930; *State v. Megardan*, 85 Minn. 41 (1901), 88 N.W. 412; *Groesbeck v. Bailey*, 209 Mich. 120 (1920), 176 N.W. 403.

Some states go further than the power of state removal of local law enforcement officers and vest a limited degree of appointing power of such officers in state authorities. Cases of such power are seen in the appointment of the sheriff in Rhode Island by the General Assembly; in Maine, New Hampshire, and Maryland, coroners are appointed by the governor with the consent of the executive council or senate; in Massachusetts and Rhode Island medical examiners are appointed by the governor with the advice and consent of the council or senate; and in Massachusetts, Maine, Rhode Island, Delaware, Maryland, and South Carolina, justices of the peace are appointed by state authorities.

In addition to this power of appointment and removal, a few states vest in state authority some supervisory control over local law enforcement officers. Maine provides that sheriffs shall obey all such orders relating to the enforcement of the laws as they may receive from the governor.[15]

An effort has been made in some Western and Southern states to secure a better organization of law enforcement officers. The methods used in Alabama, Nebraska, South Dakota, Idaho, and Wyoming are of interest in this connection.[16] South Dakota, by act of 1917, constituted the sheriffs and deputy sheriffs a state constabulary for the purpose of preserving law and order. The state sheriff, who is appointed by the governor, is the head of this state constabulary. He may employ, with the consent and approval of the governor, not to exceed three special agents to aid in carrying out the purposes of his office. He may also call into the service of the state any of the members of the state constabulary at any time that it may be deemed necessary to preserve order and enforce law in any part of the state, and it is the duty of the members of the state constabulary to comply with all orders of the state sheriff. Idaho, by act of 1919, also created a state constabulary consisting of the state department of law enforcement and all officers of the state, counties and municipalities who possess the power of peace officers.

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[13] *Rodd v. Verage*, 177 Wis. 295 (1922), 187 N.W. 830; *Holliday v. Fields*, 275 S.W. (Ky.) 643 (1925). See: Charles J. Turck, "The Governor's Power to Remove County Officials," 14 *Ky. Law Journ.* 330-337 (1926).

[14] *American Year Book*, 1926, p. 182.

[15] *Rev. Stat. of Me.*, 1916, p. 1183.

[16] *S. D. Rev. Code*, 1919, vol. 2, secs. 10226-234; *Sess. Laws of Idaho*, 1919, p. 368; *Gen. Acts of Ala.*, 1919, p. 808; *Sess. Laws of Wyo.*, 1921, ch. 18; *Comp. Stat. of Nebr.*, 1922, secs. 3281, 4832; *Laws of Nebr.*, 1927, ch. 157. Also see *Marr's Stat. of La.*, 1915, vol. 1, secs. 1341-1357.

Alabama, by act of 1919, authorized the governor to employ a special force of not more than ten men to assist him in enforcing the laws of the state. Such force of men may perform their functions in all parts of the state irrespective of local subdivisions. The law provides that they shall coöperate so far as practicable with the sheriff and other officials of the several counties, cities and towns in the enforcement of law. Wyoming created in 1921 a state department of law enforcement. The commissioner of law enforcement, who is appointed by the governor with the consent of the senate, may, with the approval of the governor, appoint such agents as may be necessary, not to exceed seven. The members of the state department, whenever practicable or possible, are to coöperate with county and municipal authorities in the detection of crime and the apprehension of criminals and the preservation of law and order.

Nebraska provides that, in the enforcement of all criminal laws of the state, the governor may call to his assistance and appoint any number of persons necessary to enforce the provisions of such laws. These persons are known as law enforcement officers; the chief of such officers is known as the state sheriff, and his assistants as deputy state sheriffs. These officers have the same powers in each of the counties of the state as have the county sheriffs, in so far as criminal matters are concerned.

While in some cases referred to in the statutes as a state constabulary, the organization in these states does not measure up to the state police as found in Pennsylvania, New York, and elsewhere. It is rather an attempt to secure more effective coöperation among the law enforcement officers in the state. These laws, however, indicate a recognition of the fact that law enforcement is, in general, unsatisfactory. But none of the states has established a regular system of supervision over local police, by means of reports, inspections, and more positive powers, such as the inspectors of constabulary exercise in England.

STATE POLICE

Modern police systems began in the cities.[17] Former unorganized bodies of night, and later day, watchmen were replaced, soon after 1850, in New York, Boston, and other large cities by organized and uniformed police, formed on somewhat similar lines to the metropolitan police force established in England in 1828. The New York City police, in 1857, were placed under the control of a state police board; and after 1860 the local police in a number of large cities were brought under direct state control. But state management of urban police was strongly opposed, and has been largely abandoned, though it is still applied in a few cities throughout the United States.

More recently another movement has set in for a small body of state police, largely for the protection of rural areas.[18] As early as 1835, the Texas republic established a small force of mounted rangers, which was revived and reorganized in 1901. In 1865, Massachusetts provided for a few state constables, and these were reorganized in 1879 as the Massachusetts District Police, used at first mainly as a detective agency. Connecticut established a small force in 1903. Arizona organized a force of rangers in 1903, and New Mexico a body of mounted police in 1905. In the latter year Pennsylvania established a state constabulary. In 1917, New York and Colorado provided for bodies of state police; in 1919, Michigan and West Virginia; in 1921, New Jersey, and in 1925, Rhode Island. A number of other states have provided for state highway police, mainly for the control of motor traffic. Three of the twelve states noted (Arizona, Colorado, and New Mexico) have, however, disbanded their state forces.

State police forces are known by various names, as state police, state constabulary, state troopers, or state departments of public safety. The object is to provide an agency which will be able to cope with the problems of law enforcement which have arisen in rural areas and which the county officers have not been able to meet. In New Jersey it is provided that the state police "shall be employed primarily in the furnishing of adequate police protection to the inhabitants of the *rural sections* of the state."[19] In Connecticut the superintendent of state police is authorized to devise and make effective a system of police patrols throughout the state, *exclusive of cities and boroughs,* with the duty of preventing crime and securing the arrest and conviction of offenders.[20] The size of the patrol forces of state police departments ranges from more than four hundred in New York and Pennsylvania to less than one hundred in Connecticut and Texas.

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[17] In France the *gendarmerie,* a national force which acts to some extent as a body of rural police, may be traced back to the maréchaussée organized early in the fourteenth century. A new police system was established in Paris in 1667. J. A. Fairlie, *Municipal Administration.*

[18] Bruce Smith, *The State Police* (1925).

While the organization of state police departments shows variation, that of the Pennsylvania department will illustrate the general plan.[21] The superintendent of state police is appointed by the governor and senate for a four-year-period and receives a salary of $6,000 a year. There is a deputy superintendent and several troops, each with a captain, lieutenant, sergeants, corporals, and privates. It is the duty of the superintendent to provide for the members of the force suitable uniforms, arms, equipment, and where deemed necessary, horses and motor equipment. He makes such rules and regulations, subject to the approval of the governor, as are deemed necessary. It is his further duty to establish local headquarters in various places, and he is authorized to do this in such a manner "as best to distribute the force throughout the sections of the Commonwealth where they will be most efficient in carrying out the purposes of this act . . . to preserve the peace and to prevent and detect crime."

One of the important questions in connection with the state police is that of the relationship between them and the sheriffs and other local officials.[22] These relations have not always been harmonious, and in some cases there has been failure to coöperate. While some states emphasize the power of the state police and give them superiority over local officers, others tend to place restrictions upon their exercise of power.

In Pennsylvania the department of state police must, wherever possible, coöperate with counties and municipalities in the detection of criminals, and in the preservation of law and order throughout the state. The commissioner of public safety in Michigan has authority, upon the order of the governor, to call upon the sheriff, or other police officer, of any county, city, township, or village within the limits of their respective jurisdictions for aid and assistance in the enforcement of law. Refusal or neglect to comply with such order to the extent requested is deemed misfeasance in office and subjects the officer so refusing or neglecting to removal from office. Sheriffs and deputy sheriffs in Connecticut must, upon request of any member of the state police department, assist in the investigation, detection, and prosecution of criminal offenses within their jurisdiction. The state police in West Virginia are authorized to take command of all peace officers and the *posse comitatus* upon request of the sheriff or call of the governor. When called by the sheriff of any county, or when the governor by proclamation so directs, they have full power and authority within a county and may "direct and command absolutely" the assistance of any sheriff, deputy sheriff, or constable.[23]

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[19] *Cum. Supp. to Comp. Stat. of N. J.,* 1911-24, vol. 2, p. 3416.

[20] *Conn. Public Acts,* 1921, p. 273.

[21] *Pa. Stat. Complete to 1920,* secs. 20112-20131; *Laws of Pa.,* 1921, p. 1061.

[22] See *Proceedings of the Second Conference for Better County Government in New York State,* 1916, pp. 49-59.

Other states, however, specifically limit the power of the state police within cities. In New York, New Jersey, and Rhode Island, the state police may not be used within the limits of cities or municipalities except when ordered by the governor to do so, upon the request of the local authorities.[24]

These restrictions have been due in part to the opposition of organized labor to the use of state police in strikes and other labor difficulties. West Virginia attempts to meet this by providing that "no officer or other members of the Department of Public Safety shall, in any labor trouble or dispute between employer and employee, aid or assist either party thereto, but shall in such cases see that the statutes and laws of the state of West Virginia are enforced in a legal way and manner." [25]

State police offer a means of securing more effective law enforcement in the rural areas in this country; and as law enforcement problems become more difficult it seems probable that their use will be extended.[26] In the *Missouri Crime Survey* it was stated that "the only possible remedy for the problem created by the inadequacy of the sheriff's office is a state police force." [27]

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[23] *Comp. Laws of Mich.*, 1922, sec. 5190 (6); *Gen. Stat. of Conn., Rev. of 1918*, vol. 1, secs. 2271 ff.; *Code of W. Va.*, 1923, ch. 19, sec. 14, par. 6. Officially known as members of the Department of Public Safety in West Virginia.

[24] Birdseye, Cumming, and Gilbert's *Consol. Laws of N. Y.*, vol. 3, p. 2728; *Cum. Supp. to N. J. Stat.*, 1911-24, vol. 2, p. 3416; *R. I. Acts and Resolves*, 1925, p. 50.

[25] *Barnes' W. Va. Code*, 1923, p. 14.

THE CORONER'S INQUEST

A coroner's inquest is held in the case of sudden deaths, where violence or other illegal means are suspected, to determine the cause of death and to secure information which may lead to the detection and prosecution of any held to be responsible.[28] To conduct such an inquiry effectively often requires a technical post-mortem examination, and also expert legal knowledge. A few states require coroners to be practicing physicians or to have medical training, but in Connecticut alone are they required to have a knowledge of law. In practice the coroner, in the great majority of cases, is "a poorly paid, untrained and unskilled individual, popularly elected to an obscure office for a short term," often serving without help, and, even in counties of large population, with only "a small staff of mediocre ability and with inadequate equipment." "Special facilities for medico-legal post-mortem examinations are the exception. . . . Provision for toxicologic examinations are even less satisfactory." [29]

As far back as the time of Shakespeare, the coroner's inquest was a subject of derision; and in this country it has been an object

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[26] Cf. Bruce Smith, *The State Police*, pp. 265-66. Several states issue annual or biennial reports of their state police departments. These indicate that the state police are active in the detection of crime. The following data have been compiled from the reports of the New York and Pennsylvania state police departments:

Year	*State*	*Arrests*	*Convictions*	*Per cent convictions*
1920	Pennsylvania	8,413	7,121	84.64
1921	Pennsylvania	12,908	9,506	86.55
1922	Pennsylvania	14,246	12,351	86.7
1923	Pennsylvania	12,230	9,358	76.52
1923	New York	14,166	12,936	91.
1924	New York	22,923	20,740	90.5

[27] *Missouri Crime Survey* (1926), p. 71. Of the fifty one sheriffs in the state who responded to an inquiry on the subject, thirty nine favored the establishing of a state police department and only twelve went on record against it.

[28] *Jefferson County v. Cook*, 47 S.W. (Ark.) 562 (1898); *Stultz v. Board of Commissioners of Allen County*, 81 N.E. (Ind.) 471 (1907); *Mar Shee v. Maryland Assurance Corp.*, 210 Pac. (Cal.) 269 (1922).

[29] Oscar T. Schultz and E. M. Morgan, *The Coroner and Medical Examiner*, National Research Council, 1928.

of criticism for more than seventy years.[30] A number of recent studies of the coroner's office agree that the prevailing arrangements are entirely inadequate, and that the office should be abolished and the work done through other agencies.

In a report on a special examination of the office of coroner in the city of New York in 1914, it was stated that: "The elective coroner in New York City represents a combination of power, obscurity and irresponsibility which has resulted in inefficiency and malfeasance in the administration of the office." It was pointed out that "of the sixty-five men who held the office of coroner since the consolidation of Greater New York, not one was found to have been qualified by training or experience for the adequate performance of his duties. Nearly all had been nominated 'to balance the ticket,' to represent a given race, religion, class, or faction. Most of them have been absurdly ignorant as to the legal and medical aspects of their work. Favorite causes of death have been assigned without a shadow of reason to doubtful cases, and terms rejected by modern science as meaningless have frequently been used in statements of the causes of deaths." [31]

The survey of Criminal Justice in Cleveland, in 1922, recommended that the office of coroner be abolished;[32] as did also the recent report on County Government in Virginia. A study of county government in Iowa reports that the office of coroner in most counties is of little value, and should be consolidated with some other office.[33] The Missouri Crime Survey urged that the character of the coroner's office should be greatly modified, and ultimately abolished. The sub-commission on police of the Crime Commission of New York reported that "there was an unanimity of opinion that the office of coroner should be abolished," and recommended that the duties of the office be entrusted to the prosecuting attorney, who should appoint his own medical examiners and have jurisdiction over autopsies.[34]

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[30] Cf. Hamlet, Act V, sc. 1; 14 *Albany Law Journ.*, 336; 6 *American Law Register*, 385 (1858).

[31] Leonard W. Wallstein, Commissioner of Accounts, *Report on Special Examination of the Accounts and Methods of the Office of Coroner in the City of New York* (1915).

[32] *Criminal Justice in Cleveland* (1922), pp. 473-4.

[33] B. F. Shambaugh, ed., *County Government and Administration in Iowa*, p. 293 (1925).

[34] *Missouri Crime Survey* (1926), p. 109; W. F. Willoughby, *Principles of Judicial Administration*, pp. 166-7.

The system of medical examiners established in Massachusetts in 1877, and since then adopted in New Hampshire and New York City provides for a preliminary examination of sudden deaths under expert medical direction; and if this indicates need for further inquiry, an inquest is held before a court at which the prosecuting attorney may be present and examine the witnesses. Any person charged at such an inquest with committing a crime is subject to arrest and prosecution in the usual manner. These arrangements have shown a marked improvement over the former coroner system, and have been commended in recent reports on this subject.

It may be noted, however, that since the medical examiners and prosecuting officers are independent of each other, under these laws, there is room for disagreement and lack of coöperation. A more concentrated responsibility would be established if the prosecuting attorneys were made directly responsible for inquests, with authority to appoint medical examiners. This is the method followed in Nebraska, where the county attorney is ex officio coroner, and a similar plan has been approved in studies of the coroner's office.[35]

PROSECUTIONS FOR CRIME

The enforcement of criminal law in the United States rests very largely on the office of prosecuting attorney, which for the most part controls the inauguration and conduct of cases against persons charged with crime. In most states this officer may participate in preliminary hearings, and in Missouri he may refuse to issue a warrant for an arrest. He guides, and often dominates, the work of the grand jury in presenting indictments for felonies, and in some states the entire responsibility for felony cases, as well as misdemeanors, rests on the prosecutor. Further conduct of cases, before and through trial, is mainly in his hands, with power to delay, compromise or dismiss prosecution. After conviction he may be consulted in determining the penalty and in granting probation, parole or pardon.[36]

In many cases, however, the personal qualities of the officers, and the organization and methods of the office are not conducive to the vigorous and efficient performance of the duties. Elected for a short term by the voters of a county, or other local district, the position is considered political. In rural counties, it is often filled by young lawyers with little experience, and serves as a training school for a political or legal career. Salaries are generally inadequate, and the prosecutors often engage also in private practice, which divides their interests. In many cases they are paid wholly or in part by fees, which are sometimes dependent on convictions.[37]

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[35] *Comp. Stat. of Neb.*, 1922, sec. 4922; *County Government in Virginia*, p. 52; W. F. Willoughby, *Principles of Judicial Administration*, pp. 167, 173.

[36] W. F. Willoughby, *op. cit.*, pp. 127-173.

The internal organization, business methods and records of the prosecutor's offices are often seriously inadequate. In rural counties there is usually no staff of assistants. In the larger urban counties, there will be a considerable staff, which permits specialization of work. But even in the largest counties the records and business methods are far from satisfactory.

Other difficulties arise from the absence of coördination between the prosecutor's office and the police. In New York City, there is usually close coöperation, because the same political organization generally controls both agencies. In many cases the county prosecutor and city police are controlled by opposing party machines; and at times even the prosecutor and sheriff may be in different political camps.

Moreover the local prosecuting officers are largely independent [38] and subject to no adequate state supervision. The Louisiana constitution provides that the state department of justice, which consists of the attorney general and his assistants, "shall exercise supervision over the several district attorneys throughout the state." [39] In other states the attorney general has a vague power of supervision; but there is little active exercise of this power. In some states there are provisions for reports and more definite authority. In some the attorney general may advise or assist the local attorneys.[40] In New York and a few other states the governor or legislature may authorize the attorney general to supersede the local prosecutor in a particular case, or special prosecutors may be appointed.[41] In Missouri and some other states the attorney general represents the state in all criminal appeals.[42] In a number of states the local prosecutors may be removed by the governor or the courts.[43]

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[37] R. Moley, *Politics and Criminal Prosecution*, chs. 3-4. In the Illinois Crime Survey, the average age and experience of prosecuting attorneys was found to be higher than in Missouri and other states. A study of 767 lawyer governors and members of Congress showed that 42 per cent had been prosecuting attorneys, and that 75 per cent of these had held that office as the first in their political career.

[38] *Fletcher v. Merrimack Co.*, 71 N.H. 96, 98 (1901), 32 Atl. 278; *Gilroy v. Com.*, 105 Pa. 484; 1 *Ex. p. Corliss*, 16 N.D. 470, 515 (1907), 114 N.W. 962.

[39] *Const. of La.*, Art. VII, sec. 56.

[40] *Page's Ann. Ohio Gen. Code* (1926), sec. 343. The attorney general has large powers in civil matters in behalf of the state; and in some states it has been held that the local attorney cannot begin proceedings in such matters, as injunctions and quo warranto. *Hawkins v. State*, 81 Md. 306 (1895), 32 Atl. 278; *State v. Ehrlick*, 65 W. Va. 700 (1909), 64 S.E. 935.

Proposals for improving the office of prosecuting attorney and the administration of criminal justice cover a wide range. Even under the present system more general recognition of the importance of the office, and more public attention to candidates, might secure the election of more competent officials. Even with the general average of officials now chosen, better records and business methods might be introduced. A specific proposal is that the prosecutor's power of dismissing prosecutions should be limited, at least by requiring a public record of the reasons for such action; and this might also be required where cases are compromised by accepting pleas of guilty for minor offenses. But such improvements are limited in scope, and are likely to be of temporary duration.

A more fundamental proposal has been to strengthen the powers and responsibilities of the prosecutor's office by concentrating in it control over all the local administrative agencies concerned with law enforcement. This would be in line with suggestions made elsewhere to limit the use of the grand jury, and to place the work of the coroner's office under the prosecuting attorney; and would also involve authority over the police.[44]

Of still broader scope are proposals for a centralized organization of law enforcement agencies in a department of justice in each state, of which the local prosecuting officers would be subordinate agencies. It seems clear, however, that such a far-reaching change cannot be expected in the near future; while the dangers of corrupt politics would not always be eliminated by this means.

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[41] *People v. Kramer*, 15 N.Y. Cr. 257; *State v. Heidt*, 21 N.D. 357 (1910), 127 N.W. 72; *State v. Dawson*, 80 Kas. 180 (1911), 119 Pac. 360; *People v. Gibson*, 53 Colo. 231, 264 (1912), 123 Pac. 531.

[42] *Stewart v. State*, 24 Ind. 142; *State v. Fleming*, 13 Iowa, 443; *People v. Buit*, 51 Mich. 199 (1883), 16 N.W. 378; *People v. Swift*, 59 Mich. 529 (1886), 26 N.W. 694; *State v. Cornwell*, 14 Wyo. 526 (1906), 85 Pac. 977.

[43] The Massachusetts Supreme Court has held that a district attorney may be removed for conduct outside of the administration of his office (such as moral character or offensive behavior) which render him unfit to perform the functions of the office. *Atty. Gen. v. Tufts*, 239 Mass. 458 (1921), 131 N.E. 573, 132 N.E. 322; *Atty. Gen. v. Pelletier*, 240 Mass. 264 (1922), 134 N.E. 407.

[44] W. F. Willoughby, *Principles of Judicial Administration*, p. 138; Alfred Bettman, in *American Bar Association Journal*, July 25, 1925, pp. 455-60.

Some improvement may be gained without attempting a policy of complete centralization, through a system of state supervision, such as has been developing in the fields of education, charities, health, and local finance. The attorney general of each state might be made more generally an agency for collecting information as to the work of the local officers through reports and inspections; his power of supplementing or superseding the local officers in particular cases might be extended; a broader power of removing incompetent local prosecutors might be provided, as in some states; and some supervision over the selection of the local officers could be established, by requiring specific qualifications or the approval of the state department. With this, the prosecuting attorney might be given some powers of supervision over the local police. For small rural counties, better results could be secured by selecting prosecutors for larger districts including several counties.

THE GRAND JURY

The grand jury has been an important instrumentality in the enforcement of the criminal laws. Under the English common law, and in most states at the present time, persons charged with serious crimes are brought to trial only after indictment by a grand jury. An indictment is an accusation in writing presented by a grand jury to a competent court, charging a person with a public offense. The grand jury does not determine whether the person is innocent or guilty of a crime; its proceedings are *ex parte*, the accused not being heard in his own defense. If in the judgment of the grand jury, the evidence is such as if unexplained or uncontradicted, would warrant a conviction by the trial jury, an indictment is presented.

While the grand jury may bring indictments on its own initiative, the determination whether an individual will be brought to trial rests largely with the prosecuting attorney. He usually prepares the cases for the grand jury, gathers the evidence, and presents it for consideration. In several states it is by statute made the duty of the prosecuting attorney to attend the sessions of the jury for the purpose of examining witnesses in its presence or of giving it advice upon any legal matter. Since the question is whether the evidence is *prima facie* sufficient to secure a conviction in a court of law, the grand jury relies largely upon the prosecuting attorney. If there appears to be a strong case against a person, but the prosecuting attorney advises that it is not sufficient to secure a conviction, his judgment will in most cases be accepted.

Many of the cases which are considered by the grand jury are those of persons who have had a preliminary hearing before a justice of the peace or magistrate, and have been bound over to the grand jury. Such persons may have been committed to jail or released on bond. If the grand jury finds that the evidence is sufficient to warrant the bringing of the case to trial, they return "a true bill" and the person is indicted; and if they feel that the evidence is not sufficient to secure a conviction in a court of law, they fail to find a bill and the case is dropped.

The constitutions of all but ten states contain provisions requiring or permitting indictments by the grand jury in all or certain classes of criminal cases.[45] The statutes of the ten exceptional states also require or permit grand juries.[46] Indictment by grand jury is required for certain crimes in twenty-five states. In most states the grand jury is required only in felonies, but others also require it for some misdemeanors as well.[47] Connecticut requires indictment only for those crimes in which the punishment may be by death or imprisonment for life; Mississippi, for offenses punishable by death or imprisonment for more than ten years; and in Louisiana a person may be brought to trial on information in all except capital cases.

Some state constitutions empower the legislature to modify or abolish the grand jury system. In other states the legislature may dispense with the grand jury for misdemeanors only. The constitutions of ten states provide that cases may be prosecuted by information as well as by indictment.[48] Altogether, in twenty-four states grand jury indictments are no longer required for all felony cases; and in these states most prosecutions are based upon information. Five of these states, however, require an examination and commitment by a magistrate as a preliminary to the filing of a bill of information.

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[45] For constitutional provisions on the grand jury see: *Illinois Constitutional Convention Bulletins,* 1920; pp. 833-5; *Index Digest of State Constitutions,* 1915, pp. 811-12.

[46] Georgia, Kansas, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, Vermont, Virginia, Wisconsin.

[47] Arkansas, Nebraska, New Jersey, South Carolina, Tennessee, and West Virginia.

[48] Arizona, California, Idaho, Missouri, Montana, Nevada, Oklahoma, South Dakota, Utah, and Washington.

The common law grand jury consisted of from thirteen to twenty-three men, and the concurrence of thirteen was necessary to a verdict. Several states have now fixed the number constituting the grand jury at less than the common-law number (from seven to eighteen members) ; in no state is the number more than the maximum at common law. Where there has been a reduction in the number of grand jurors, there has also been a corresponding reduction in the number necessary to vote an indictment.[49]

Continued use of the grand jury has been defended as "a desirable safeguard against the unwarranted ignominy of being put on public trial for an offense which there is no reasonable ground to believe the accused has committed."[50] The members of the grand jury are persons who would be qualified to sit on a trial jury; the evidence is thus heard and considered by a body "impartially selected from the people." This has been felt to be wiser than to allow persons to be brought to trial by the act of a single officer "whose training would incline him to find grounds upon which the prosecution might be sustained."[51] There has been, however, much objection to the use of the grand jury.

The grand jury has been criticized because its secret deliberations may permit unfounded and malicious accusations to be made and indictments returned. "It is not very complimentary to our manhood but every person of experience knows that many prosecutions are instituted for the sole purpose of revenge and not from a desire to vindicate the law. An indictment in many cases is nearly as injurious as a conviction as it subjects the accused to the suspicion of having committed the crime charged, therefore affects both his financial and social standing in the community."[52]

[49] In South Carolina, the grand jury consists of eighteen members, and two-thirds are required to present an indictment; in seven states (Colorado, Kentucky, Louisiana, Missouri, Oklahoma, Texas and Wyoming) there are twelve members and a vote of nine is required; in Iowa, it consists of five to fifteen members as the legislature may provide; in three states (Montana, Oregon and Utah) there are seven members and five are needed to return a true bill. In Ohio the number of members is determined by law. *Illinois Constitutional Convention Bulletin,* No. 10.

[50] *Cyclopedia of American Government,* vol. 2, p. 268.

[51] G. J. Edwards, *The Grand Jury* (1906), p. 35.

[52] Samuel Maxwell, "Needed Reform in Criminal Prosecutions," 32 *American Law Review* 72-77 (1898).

It has been urged that the grand jury does not adequately centralize responsibility for returning or failing to return an indictment. The deliberations and vote are secret; if the grand jury does indict without cause, we cannot definitely place the responsibility. If it fails to bring indictments the same difficulty is presented. The report of the Cleveland Foundation Survey of the Administration of Criminal Justice in that city stated: ''Generally the grand jury does little more than rubber-stamp the opinion of the prosecutor. It is almost exclusively dependent upon him for its knowledge of the law, and for its information on the facts it is almost entirely dependent on his zeal and willingness.''

Another criticism of the grand jury is that it introduces an unnecessary delay in the prosecution of criminal cases. There is often a preliminary hearing before the grand jury inquiry; and these, with the trial proceedings, call for three separate presentations of evidence. A considerable proportion of cases submitted to the grand jury do not result in indictments; but it seems probable that in most cases this is due to the advice of the prosecuting attorney. Where a true bill is returned against his advice, he must conduct a case against his own judgment, or may later have the case dismissed.

The grand jury, like the coroner, seems to have served a useful purpose under the earlier system of English law when there were no prosecuting officials. Under the present arrangements, it has been called ''a cumbersome, expensive and unsatisfactory mode of procedure,'' which has outlived its usefulness.

INFORMATION

That there is general dissatisfaction with the grand jury is shown by the fact that in about half of the states its use has been limited, and its functions given to the prosecuting attorney.[53] In such cases there is prosecution by information. An information is ''an accusation in the nature of an indictment, from which it differs only in being presented by a competent public officer on his oath of office instead of a grand jury on their oath.'' The information ''differs in no respect from an indictment in its form and substance, except that it is filed at the mere discretion of the proper law officer of the government, ex officio, without the intervention of a grand jury." [54]

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[53] R. P. Shick, ''Simplifying Criminal Procedure in the Lower Courts,'' 125 *Annals of Amer. Acad. of Pol. and Soc. Sci.* 112-19 (1926); Justin Miller, ''Informations or Indictments in Felony Cases,'' 8 *Minn. Law Rev.* 379 (1924).

Michigan was the pioneer state in providing for prosecutions by information; and California early provided for prosecution by this method. In a case before the Supreme Court of the United States in 1884 it was held that prosecution by information in felony cases is not a violation of the due process clause of the Constitution.[55] With this favorable decision the extension of prosecution by information has been quite rapid. Certain limitations have been placed in some states upon its use, as in Connecticut, Louisiana, and Mississippi, where indictment is still required for capital cases or crimes the punishment of which is imprisonment for life or a long term of years.

Prosecution of felonies by information has been objected to as placing too much power in the hands of the prosecuting attorney, which may be abused by arbitrary exercise without sufficient grounds, or by failure to act where the evidence warrants. To protect accused persons from unwarranted charges, in most cases the information must be verified by oath of the prosecuting attorney or of some person competent to testify as a witness in the case. In some states (as in Arizona, California, Idaho, Montana, Oklahoma, and Utah) a preliminary examination before a justice of the peace or other magistrate is required before an information may be filed. In Iowa, if the judge does not approve the information, the charge is presented to the next grand jury.[56]

To safeguard the rights of the public against failure to act, it is usually provided that the prosecuting attorney must inquire into all cases where there has been a preliminary examination and the accused has been committed to jail or held on bail. Some states provide that, if the prosecuting attorney determines in any such case that an information ought not to be filed, he shall present to the clerk of the court a statement in writing of his reasons, in fact and in law, for not filing an information in the case. Upon an examination of the evidence, and if not satisfied with the statement of the prosecuting attorney, the court may direct him to file the proper information and to bring the case to trial.[57] In Kansas,

[54] *Bouvier's Law Dictionary,* vol. 2, p. 1562.

[55] *Hurtado v. California,* 110 U. S. 516 (1884). Also see *Bolln v. Nebraska,* 176 U. S. 83 (1900); *State v. Guglielmo,* 80 Pac. (Calif.) 103 (1905).

[56] *Code of Ia.,* 1927, sec. 13644.

[57] *Comp. Stat. of Mich.,* 1915, vol. 3, sec. 15765; *Comp. Stat. of Nebr.,* 1922, secs. 19986 ff.

the judge having jurisdiction over a case, may require the prosecuting attorney to prosecute any criminal by information.[58]

Although prosecution by information may be satisfactory in the case of the ordinary offender, it has been urged that it may fail where those accused have large political power and influence or close personal relations with the prosecuting attorney. One method by which this situation may be met is that provided in Kansas as noted above; but if the judge is also elective, he too, and for the same reason, may not wish to assume responsibility for instituting proceedings in such a case. To provide for such contingencies and other special conditions it seems advisable to retain the grand jury for occasional use, as is done in some states where information is regularly used for felony cases.

Several states using prosecution by information empower judges to call grand juries, as in Michigan, Missouri, Arizona, Montana, and Utah. Some states make the calling of the grand jury dependent upon the voters of the county. In Kansas, a grand jury is summoned only when a petition signed by a certain number of taxpayers, varying with the population of the county, is presented to the judge of the district court at least forty days before the opening of the term of court at which the grand jury is wanted. In Oklahoma, a grand jury may be called by the judge upon his motion, or it must be called by the judge upon the filing of a petition signed by one hundred resident tax payers of the county. Other states whose constitutions permit the occasional use of the grand jury are California, Kansas, South Dakota, and Washington.

In states where prosecutions of felonies are usually by information, but where grand juries may be called for special purposes, the latter are in fact seldom used. In Michigan, Wisconsin, Nebraska, Oklahoma, and California, grand juries are summoned at times to investigate charges of corruption in public office and of conspiracy or widespread violation of law when a large number of persons are involved.[59] This resembles in some respects the occasional use of special grand juries in states where the grand jury is regularly used for felony cases.

From an inquiry conducted by the American Law Institute, it seems to be established that prosecution by information is less expensive and more expeditious and efficient than prosecution by indictment. At the same time, there are strong reasons for retaining the grand jury for investigating purposes, and for exceptional conditions.[60]

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[58] *Rev. Stat. of Kas.*, 1923, sec. 62-807.

[59] R. Moley, *Politics and Criminal Prosecution*, p. 145; W. F. Willoughby, *Principles of Judicial Administration*, p. 193.

THE PETIT JURY

After an indictment has been returned by the grand jury or an information filed by the prosecuting attorney, the accused is brought to trial before a petit or trial jury. At common law the petit jury consisted of twelve men with proper qualifications to try the case. The common law rule also requires a unanimous agreement in order to arrive at a verdict. The petit jury has been adopted in all states and has come to be an accepted agency for the administration of justice. Certain changes which have been made from the old common law petit jury will be discussed later.

With the serious consideration that has been given in recent years to the question of law enforcement and the administration of justice in criminal cases, the petit or trial jury has been undergoing serious and critical attack. Much of the responsibility for the miscarriage of justice has been held to be caused by the use of the jury system. It has been referred to as a ''relic of barbarism''; as the ''weakest element in our judicial system''; as the ''arch obstructor of justice in all the American courts''; and as an institution which is ''ludicrous, illogical, impractical, and thwarts justice.''[61] There are those who feel that ''nearly all the delays, obstructions, useless costs, failures of justice, and general weakness in our whole system of law administration are related intimately with the jury system.'' The jury system has also been condemned because it ''encourages pettifoggers, ambulance-chasing, shystering; that it lowers the standards of the bar; that it decreases public confidence in the administration of justice, and that it reduces respect for the law.''[62]

A recent criticism of the petit jury states that its use ''means that matters requiring adjudication, instead of being submitted to professional experts, trained in the performance of their duties and acting under a continuing responsibility, are handed over to a body of laymen, selected almost at random . . . and who perform their duties under no sense of continuing responsibility.''[63] Moreover, in its practical operation the method of selecting juries exempts or excuses those best qualified; and juries are largely composed of persons of low intelligence, often influenced by race, religious, class or other prejudices, and sometimes ''packed'' or tampered with; while the process of selection at times involves prolonged delay and expense.

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[60] E. R. Keedy, ''The Drafting of a Code of Criminal Procedure,'' *Amer. Bar Assn. Jour.*, January, 1929.

[61] Jehu P. Applegate, ''Trial by Jury as 'A Relic of Barbarism','' 24 *New Jersey Law Journ.* 644 (1901); Charles A. Boston, ''Defects in the Administration of Justice,'' 61 *Univ. of Pa. Law Rev.* 1-32 (1912); J. C. McWhorter, ''Abolish the Jury,'' 57 *Amer. Law Rev.* 42-56 (1923).

[62] Percey Werner, ''Substitute for Jury Trial in Civil Cases,'' *The Public* (Sept., 1919, N. Y.), quoted in 89 *Central Law Journ.* 221-22 (1919).

Much of the dissatisfaction with the jury system may be due to the common law requirement of unanimity which has been followed in most states. This requirement has been referred to as ''a preposterous relic of barbarism,'' and as ''an antique absurdity, which has too long fettered the administration of justice.''[64] Its defects have been summarized as follows: ''The rule encourages crime; it is the hope of the guilty, and the trust of dishonest and litigious suitors; it obstructs and delays justice; it multiplies lawyers' fees, and burdens suitors with costs, and the citizen with taxes; it degrades and dishonors the citizen, by treating him worse than the felon he is called to try; it makes jury service disagreeable, and dangerous; it often enables criminals in cities, where that class abounds, to escape conviction by smuggling one of their number on the jury; it is an incentive to bribery and corruption; it is a fertile source of false verdicts, and a relic of barbarism and superstition, that ought to be abolished.''[65]

While the attack made upon the jury is mainly with reference to criminal cases, it has also been stated that in civil cases it is ''an institution that has outlived its usefulness, and that is wholly inadequate to meet the needs of present day litigation.''[66]

The constitutions of all states guarantee the right of trial by jury in criminal cases; all states except Louisiana and Utah guarantee the right of its use in civil cases. But there are important variations in its use which have resulted from the defects of the jury as revealed in American experience. Among the changes in the trial jury system have been that provision is made for the use of juries of less than twelve persons and that less than a unanimous verdict is required in both civil and criminal cases. Some states now provide for trial by less than the common law jury of twelve. In Utah, capital cases are tried by a jury of twelve, but eight constitute a jury in other cases. The constitution of Florida empowers the state legislature to fix the number of jurors at not less than six in any case. The legislature has by statute provided that there shall be a jury of twelve in capital cases, but a jury of six in all other cases. The Michigan legislature is empowered by the state constitution to provide for a trial by less than twelve men; and this may be done in Virginia if the punishment is not death or imprisonment in the penitentiary. In Louisiana only cases in which the punishment is necessarily capital or at hard labor are tried by a jury of twelve; if the punishment may be at hard labor, a jury of five is used; and if the punishment may not be at hard labor, trial is by the judge alone.

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[63] W. F. Willoughby, *Principles of Judicial Administration*, p. 489. See also pp. 497 ff. for a defense of the jury system by Joseph H. Choate in 1898, and a critical analysis of his arguments.

[64] 2 Hallam's *Middle Ages* 378, quoted in Henry C. Caldwell, ''The American Jury System,'' 22 *Amer. Law Rev.* 853-72 (1888). Also see John Freeman Baker, ''Should Trials by Jury Be Abolished?'' 66 *Albany Law Journ.*, 307-8 (1904).

[65] Henry C. Caldwell, *op. cit.*

[66] 60 *American Law Rev.*, 938-52 (1926).

In capital cases a unanimous verdict of a jury of twelve is still required in all states. Some states provide, however, for less than a unanimous verdict in other cases. In Louisiana, cases in which the punishment must necessarily be at hard labor are tried by a jury of twelve and of these nine may render a verdict. The constitutions of Oklahoma and Texas provide that three-fourths of the jury may render a verdict in cases below the grade of felony; while in Montana two-thirds of the jury may render a verdict in such cases. In Idaho, the constitution empowers the legislature to provide for a verdict by a two-thirds vote of the jury in misdemeanors.

More changes have been made in the jury in civil cases. The constitutions of at least seven states permit the legislature to provide for a jury of less than twelve in civil cases.[67] Utah fixes the number of members of the jury in civil cases at eight in courts of general jurisdiction. The most numerous changes from the common law jury are in the number necessary to a verdict in civil cases. Eighteen states provide for or permit a less than unanimous verdict in civil cases in courts of record.[68] In some instances these constitutional provisions are self-executing, while in others they are merely permissive. While most of these states require a three-fourths vote for a decision, some require a two-thirds vote. A verdict may be returned in Minnesota by five-sixths of the jury if it has deliberated not less than twelve hours.

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[67] Michigan, Colorado, Wyoming, South Dakota, New Jersey, Florida, and Virginia.

[68] See *Ill. Const. Conv. Bull.*, 1920, pp. 843-6.

Several states now provide for the waiver of trial by jury in civil cases. In Texas, no jury is impaneled in civil cases unless demanded by one of the parties and a jury fee of five dollars is paid into the court. In Michigan, Utah, and West Virginia, a jury trial is deemed waived unless demanded. Similar provisions for waiver of jury trial are found in other states.

While the common-law rule is that a jury cannot be waived in felonies it is generally held that it may be waived in misdemeanors. California, Idaho, and Montana have constitutional provisions for the waiver of jury trial in cases not amounting to a felony. In Vermont, trial by jury may be waived in cases not punishable by death or imprisonment in the penitentiary. The constitutions of Minnesota and Wisconsin stipulate that provision may be made by law for the waiver of the jury.

Maryland has allowed trial by jury to be waived since the beginning of her judicial history, and since 1850 it may be waived for all crimes. The waiver of jury trial is a practice as well as a theory in that state. In 1924 over 90 per cent of all the cases tried in the criminal court of Baltimore were tried by judges alone. In only one hundred and eighty out of 4,499 criminal trials was a judge asked for. The county courts of that state also report more cases tried by judges than by juries. While most cases are heard by one judge, in capital cases or those in which the punishment may possibly be death, it is usual to provide two or three judges to sit in the case.[69]

One of the advantages of this procedure has been the speeding up of justice. The criminal courts of Baltimore in 1925 disposed of 92 per cent of the cases within three weeks of arrest; "only twenty-four triable cases remained on the docket after the end of the court term, a volume of 4,057 cases having been disposed of."

A presiding judge of the Maryland Court of Appeals has summarized the advantages of this method of procedure as follows: "The trials are usually less formal than trials before juries, and, of course, quicker. There is no delay in the selection of the tribunal, often opening statements are omitted as unnecessary, the evidence is more concise, and there are fewer objections or other interruptions.''[70]

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[69] Clarence N. Callender, "Jury Trial in Criminal Cases," 125 *Annals of Amer. Acad. of Pol. and Soc. Sci.* 106 (1926); R. P. Shick, "Simplifying Procedure in the Lower Courts," *ibid.*, pp. 112-19 (1926).

By act of 1921, Connecticut also provided that in all criminal prosecutions the party accused may, if he so elects when called upon to plead, be tried by the court instead of by the jury.[71] During the first four years of the use of this law it has been stated that ''roughly about 70 per cent of the cases were tried by the court and about 30 per cent by the jury.'' An extension to other states of provision for waiving jury trials in criminal as well as civil cases would mean a decrease in the number of such trials, and a more expeditious conduct of such cases.[72]

Recent surveys of criminal justice in a number of states indicate, however, that the trial jury is becoming an institution of diminishing importance. As stated in the report of the Illinois Survey, ''Defective an institution as the jury may be, it functions so seldom as an eliminating agency that it seems scarcely worth while to consider remedies for the evils supposed to be associated with it.''[73]

From these studies it appears that in New York City, Chicago, St. Louis, Kansas City, and Cincinnati, more than half of those arrested for felonies were eliminated in the preliminary stages; and from 10 to 12 per cent were eliminated by the grand jury, except in the Missouri cities where only 2 to 3 per cent were eliminated at this stage. From 8 to 20 per cent were eliminated in the trial court; and guilt was established in from 19 to 28 per cent of the arrests.

But a large proportion of cases where guilt was established was of cases where pleas of guilty were made, often for lesser offenses, and convictions by the court without a jury where the felony charge had been waived. This was true, not only in large metropolitan cities, but also in smaller urban and rural counties. For the latter classes of counties in New York state, Illinois, Minnesota, and California, pleas of guilty were from four to ten times as many as jury verdicts of guilty.[74]

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[70] Carroll T. Bond, ''The Maryland Practice of Trying Criminal Cases by Judges Alone Without Juries,'' 11 *Amer. Bar Assoc. Journ.* 699-703 (1925); Alan Johnstone, Jr., ''Suggestions for Reform in Criminal Procedure,'' 125 *Annals of Amer. Acad. of Pol. and Soc. Sci.* 94-98 (1926).

[71] *Conn. Public Acts,* 1921, ch. 267; William H. Maltbie, ''Criminal Trials without a Jury in Connecticut,'' *Annual Report of Judicial Council of Mass.,* 1927. App.

[72] The Supreme Court of the United States has held that a state statute, conferring upon one charged with crime the right to waive a trial by jury and elect to be tried by the court, and conferring the power upon the court to try the accused in such case, is not in conflict with the Constitution of the United States. *Hallinger v. Davis,* 146 U. S. 314 (1892). Also see *Dailey v. State,* 4 Ohio St. 57 (1854); *People v. Noll,* 20 Cal. 164 (1862); *State v. Worden,* 46 Conn. 349 (1878); *State v. Albee,* 61 N.H. 423 (1881).

[73] *The Illinois Crime Survey* (1929), p. 46.

In Illinois only ten per cent of the felony cases brought to trial were decided by juries: less than five per cent convictions, and more than five per cent acquittals or mistrials. In Chicago the proportion of convictions was less and acquittals more than in the other urban counties studied; and in the two small rural counties studied ten per cent of the felony cases coming to the trial court resulted in conviction by a jury, as compared with fifty per cent of pleas of guilty, no cases of acquittal and forty per cent pending.

On the other hand in Baltimore, Cleveland and Milwaukee, guilt was established in from 53 to 64 per cent of the felony arrests. In Milwaukee the number of such arrests was about the same in proportion to population as in Chicago, but only 17 per cent were eliminated in the preliminary stages and 19 per cent in the trial court. Acquittals and mistrials were only 2½ per cent of the cases brought to trial, jury convictions were slightly more than three per cent; convictions by the court *without a jury* of the offense charged were 25 per cent; and pleas of guilty of the offense charged were 45 per cent, and for lesser offenses only one per cent.[75]

CHANGE OF VENUE

Closely connected with the question of the use of the petit jury is that of change of venue. While the accused may secure a change of venue to another county when it is claimed that he will not be able to secure a fair trial in the county having jurisdiction over the case, in most states, the prosecution has no such right. In labor cases the state is sometimes unable to secure a conviction, regardless of the evidence in the case. This was illustrated in the murder of the strikebreakers who were brought into Williamson county, Illinois, in 1922. Even though the evidence may be sufficient to secure a conviction if a fair trial could be had, the state is unable to secure such a trial, because of the impossibility of securing a jury that would convict in such a case. To remedy this condition, provision should be made for change of venue by the state as well as by the defense. This is now provided in Kentucky and South Carolina.[76]

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[74] R. Moley, *Politics and Criminal Prosecution*, pp. 28, 161. In Georgia counties and in San Francisco verdicts of guilty were more numerous than pleas of guilty; and in Cincinnati, verdicts were 41 per cent of the total cases where guilt was established.

[75] *Illinois Crime Survey*, pp. 37-43.

JUDICIAL ORGANIZATION

Juvenile and Other Specialized Courts.[77]—A recent development in the administration of justice has been the establishment of specialized courts or branches of existing courts for dealing with certain classes of cases. Of these, the most numerous are juvenile courts for delinquent children. Other specialized agencies are those for domestic relations, traffic violations, and small claims.

Methods of dealing with delinquent children have been undergoing modification for more than a hundred years. The first juvenile courts were those for Cook county, Illinois, established in 1899, as a branch of the circuit court, and for Denver, Colorado. Since then every state except Wyoming has made special provision for juvenile cases; and a survey made in 1918 received reports from 2,034 courts with authority to hear children's cases involving delinquency or neglect.

There is, however, great variation in the provisions for juvenile cases in the different states, and even in the same state. Only 321 of the 2,034 courts were effectively organized for juvenile work. While specially organized courts were found in all cities of over 100,000 population, and were available to 70 per cent of the population in cities of 25,000 to 100,000, such courts were available to only 29 per cent of the population in cities of 5,000 to 25,000 and to only 16 per cent of the population in rural areas. In half of the forty-eight states less than a fourth of the population was within reach of courts equipped for children's work, and in several states no courts with special organization were reported.

[76] *Const. of Ky.*, sec. 11; *Const. of S. C.*, Art. VI, sec. 2.

[77] Evelina Belden, ''Courts in the United States Hearing Children's Cases,'' *United States Children's Bureau, Publication No. 65* (1920); Sophonisba P. Breckinridge and Helen R. Jeter, ''Summary of Juvenile Court Legislation in the United States,'' *United States Children's Bureau, Publication No. 70* (1920); Katherine F. Lenroot and Emma O. Lundberg, ''Juvenile Courts at Work,'' *United States Children's Bureau, Publication No. 141* (1925); Katherine F. Lenroot, ''The Evolution of the Juvenile Court,'' 105 *Annals of Amer. Acad. of Pol. and Soc. Sci.*, 213-23 (1923); John L. Gillin, *Criminology and Penology* (1926), ch. 33; Edwin H. Sutherland, *Criminology* (1924), pp. 284-85.

In providing for juvenile offenders, the usual practice has been to make such cases a specialized part of the work of an existing court. It is only in the larger cities that distinct children's courts are commonly found. Jurisdiction over juvenile cases has most commonly been made a specialized part of the county court; but in some cases it is part of the work of the probate court, the superior, circuit or district court.[78]

The juvenile court of Cook county, Illinois, is a branch of the circuit court. In New Jersey, the judge of the court of common pleas serves as judge of the juvenile court. In Minnesota counties of over 33,000 population the district court has jurisdiction over juvenile cases; in counties of less than that population the probate court has jurisdiction. The law provides that the judges of the district court shall designate one of their number to hear all cases involving dependent, neglected or delinquent children under eighteen years of age. This judge must give this work precedence over all his other court work. In Iowa the judges of the district court designate one of their number to act as judge of the juvenile court in the county.[79]

The juvenile court act of Arizona provides that the superior court within the counties of that state shall have jurisdiction over juvenile offenders. The law provides that judges of such courts must hold examinations, in chambers, of all dependent or delinquent children who are accused of crime, in advance of any criminal prosecution. The judges have power in their discretion to suspend criminal prosecution for any offenses that may have been committed by such children. Juvenile courts have also been established in Georgia counties of above 60,000 population. The judge of the juvenile court is appointed by the judge of the superior court for a term of six years. In North Carolina, the clerk of the superior court is judge of the juvenile court.[80]

In Michigan and Missouri, juvenile cases are brought before the probate court; and in Kansas, the probate judge of the county is judge of the juvenile court. A juvenile court has been established for all counties in Arkansas, which is held by the county judge.

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[78] Probate court in Arkansas, Michigan, Wisconsin, Missouri, and Kansas; superior court in Arizona, California and North Carolina; district court in Iowa, Minnesota and New Mexico.

[79] *Cum. Supp. to N. J. Stat.*, 1911-24, vol. 1, secs. 53-207 ff.; *Mason's Minn. Stat.*, 1927, vol. 2, secs. 8636 ff.; *Code of Ia.*, 1924, ch. 179.

[80] *Rev. Stat. of Ariz.*, 1913, secs. 3562 ff. Also see *Gen. Acts of Calif.*, 1923, Part I, Act 3966; *Consol. Stat. of N. C.*, 1924, vol. 3, sec. 5040; *Park's Ann. Code of Ga., Supp.* 1922, vol. II, secs. 900 (a) ff.

If the specialized treatment received in the juvenile court is advantageous, it should be extended to the youthful offenders in the rural areas as well as to those of the city. As has been stated by one authority, "The county seems to be the best territorial unit for a juvenile court system, at present. If the city is taken as a unit, the rural parts of the county in which the city is located are left without provision." [81]

Closely related to cases of juvenile delinquency in many instances are family difficulties such as poverty, marital disagreements, desertion and non-support and divorce. Those interested in these social problems are tending to the opinion that they can best be handled through one agency dealing with various phases of domestic relations; and special courts or divisions of existing courts have been established in a few places. A special division of the Buffalo municipal court was established for this purpose in 1910; and similar agencies have been organized in New York City, Chicago, Philadelphia and Cincinnati.[82] Courts of domestic relations have also been provided in Multnomah County (Portland), Oregon, and two counties in West Virginia.

Special courts or divisions for the trial of petty civil suits have been established in a number of states. In 1913 Kansas provided for "small debtor courts" in Topeka, Leavenworth, and Kansas City; and in the same year the Cleveland municipal court established a conciliation branch for handling small cases. In 1915, Oregon created a small claims department in the district court of Multnomah county; and in 1916 a small claims branch was set up in the Chicago municipal court. In 1920 similar provisions were made in Philadelphia and Spokane; and Massachusetts passed an act for a state system of handling small claims.[83] Similar acts have been passed in California, South Dakota, Nevada, and Idaho. Boards or courts of conciliations are provided for in Minnesota and North Dakota.

Special police courts have been created in many American cities for the trial of minor criminal cases, and, in some cases with a limited jurisdiction in civil matters. Criminal courts of oyer and

[81] Edwin H. Sutherland, *Criminology*, p. 288. Also see William Anderson and Bryce E. Lehman, *County Government in Minnesota* (1928), p. 116.

[82] W. F. Willoughby, *Principles of Judicial Administration*, p. 328.

[83] W. F. Willoughby, *op. cit.*, pp. 311 ff. G. L. Schramm, *Piedpoudre Courts.*

terminer are provided in Pennsylvania, New Jersey, and Delaware; and special criminal courts are also provided in other states, as for Cook county, Illinois, Marion county, Indiana, and for some counties in West Virginia and Florida.

Unified Local Courts.—The multiplication of local courts in many states, with overlapping and sometimes conflicting jurisdiction, is a serious defect in judicial organization, causing confusion, uncertainty and delay in judicial proceedings. In a number of states there are both district or circuit courts and county courts, and in some cases also probate courts and equity courts, while petty cases are in rural districts usually tried before justices of the peace. A single integrated judicial organization for each local area, definitely related to the state judicial system as a whole, should make possible distinct improvements in judicial administration. The advantages to be secured by such a system have been set forth as follows: [84] "1. It will do away with litigation involving jurisdictional questions. 2. It will effect a consolidation of clerks' offices, thereby promoting efficiency and economy. 3. It will result in a more speedy disposition of litigation owing to the fact that the judge will always be at home and available to dispose of cases brought before him. The proponents of this system also suggest the abolition of terms of court. The proposed single court is to sit continuously. 4. It will effect complete unification of the rules of practice and procedure in trial courts of record. 5. It will enable the smaller counties to obtain a more effective political control of the judge. It is contended that small counties in large circuits have no voice whatever in the selection of circuit judges and that, not being dependent upon the smaller counties for re-election, some circuit judges are not responsive to the needs of such counties."

Some progress in this direction has been made by the organization of municipal courts, such as those of Chicago (established in 1906), Cleveland (1912), and Cincinnati (1913). The Recorder's Court of Detroit, which began operation in 1920, goes further in combining all the criminal courts of the city.

Indiana, Iowa, California, and Arizona have systems of judicial organization which approach to a single trial court. The circuit court in Indiana, which usually includes a single county, but in a few cases two counties, has jurisdiction in all cases, and except in a few counties is the only court of record. Iowa has a district court system, a district including one or more counties; and this court has complete jurisdiction, and except in a few cities is the only court of record. In Arizona and California there is one superior court in each county exercising general jurisdiction. A single judge presides over this court in the smaller counties; while in the counties having a large population more than one judge is needed. In some of the more populous counties more than fifteen judges are needed.

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[84] *Ill. Const. Conv. Bull.*, 1920, p. 801.

In considering a plan of judicial organization for the county, the question is presented as to what can be done with the cases which are not of great enough importance to warrant their being brought to a central point. This involves the disposition to be made of the office of the justice of the peace. The justice of the peace system was a means of bringing justice to every one's door when means of travel were poor. But under present conditions of travel the result may be reached in another way.[85]

Among the methods proposed for dealing with this question is that it should be competent for the county judge to convene his court anywhere in the county and regular sittings should be scheduled in the towns of sufficient importance.[86] County judges could go to every part of the county to try causes, there being as many local offices in the county for filing papers and beginning causes as business required. The county judge would visit the different parts of the county as often as needed, but not less often than once in sixty days. Such a plan is used in Canada where every township has a resident clerk and bailiff and is visited at least once in every sixty days by the county judge who then hears cases involving less than one hundred dollars. This would seem to be a satisfactory means of meeting the situation as to civil cases, but would not take care of criminal cases.

Under such a plan, the work of the county judge would be greatly increased, and in the case of many counties he would probably be unable to take care of all of the work. The county judge in such cases might be empowered to appoint one or more trial justices to exercise the jurisdiction formerly conferred on the justice of the peace. This would be an improvement in that it would tend to centralize control over the judicial system of the county in the office of county judge; at present, with the decentralized administration of justice through the justices of the peace, the system is unsatisfactory.

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[85] *American Bar Association Reports,* 1909, p. 578.

[86] Herbert Harley, ''The County Judiciary,'' *County Government in New York* (1915), p. 52.

Since there is need for a local magistrate to take care of minor criminal cases, it may be better to reform the office of justice of the peace than to have the work taken care of by a county judge on circuit. For this purpose it has been proposed to:[87] 1. Make the office more important and more dignified. This would be done by making the district larger than the township, with perhaps six or seven as an average for a county. 2. Use some form of expert selection. This could be done by the county board with the approval of the county judge or by the county judge alone. 3. Abolish the fee system. This would remove one of the things which has brought the justice of the peace into disrepute. 4. Secure a greater degree of administrative direction over the justice of the peace. The object would be to provide a unified county judicial system under the supervision of the county judge.

The justice of the peace system has been so unsatisfactory in some of the great urban communities, as in Chicago, that it has been replaced by municipal courts. In the more populous counties in California, Washington, Colorado, and Virginia, justices of the peace have been placed on a salary basis. Virginia has authorized counties to replace justices of the peace by trial justices with fixed salaries.[88]

It will be difficult, if not impossible, to abolish justices of the peace. They should be eliminated, however, where municipal courts have been established. And in the rural areas efforts should be made to improve their work by giving the county judge more definite powers of supervision over the justices.

A proper judicial organization is essential if the county is to become a more satisfactory area for the administration of justice. Much depends upon the sheriff and the prosecuting attorney, but they in turn must depend upon the courts. Better results may be secured by a greater centralization of control within the county over the justices of the peace, and within the state over the county courts.

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[87] Herbert Harley, *op. cit.*, pp. 53-54.

[88] Chester H. Smith, "The Justice of the Peace System in the United States," 15 *Calif. Law Rev.* 118 (1927); A. B. Butts, "The Justice of the Peace—Recent Tendencies," 22 *Amer. Pol. Sci. Rev.* 946 (1928); "The Passing of the Justice of the Peace," 12 *Va. Law Register* 110 (1926).

State Judicial Organization.—The system of judicial organization has not been entirely suited to secure an efficient and satisfactory enforcement of state law. While local courts are engaged primarily in the administration of state law, they have been largely decentralized and without adequate central guidance or control. There is often a varying attitude and policy in the same state on the part of locally elected judges towards the enforcement of a state law. This may be seen in the case of a state prohibition law where a maximum and minimum penalty is provided for its violation. In some counties judges are consistently applying the maximum penalty for violations, while in others, because of local sentiment, violators are receiving the minimum penalty. The effect is a vigorous or a lax enforcement of state law according to the local sentiment. One means of avoiding a breakdown in the state law enforcement policy in such cases, and of preventing what is in fact local option in law enforcement, is to make all judges responsible to the central government. This could be secured by vesting their appointment and removal in the central state authorities.

To organize more effectively the judicial system of the state it has been proposed to concentrate the whole judicial power in one unified court system. In a report made in 1909 by a committee of the American Bar Association, which was appointed to study the American court system, it was recommended that "the whole judicial power of each state, at least for civil causes, should be vested in one great court, of which all tribunals should be branches, departments or divisions."[89] While the judicial power would thus be concentrated in one court, it was recommended that the court be constituted in three chief divisions, one of which would be the county court. The county courts would have "exclusive jurisdiction of all petty causes, all of them to constitute in the aggregate one branch, but with numerous local offices where papers may be filed, and as many places for hearing of causes in the county as the exigencies of business may require."

The object of such a unified court system would be to secure centralization of control over the work of the judges of the court. The unified supervision and control by some central authority would probably tend to remedy in part the evils of the locally elected judges. But if the plan of a unified judiciary is carried to its logical conclusion, the judges of this court would be selected

[89] *American Bar Assoc. Rep.*, 1909, p. 578.

by the central authorities. Such a plan would constitute a real judicial system, instead of "a jumble of disconnected and disjointed courts, each pursuing its own way, with little regard to any other," such as we have in most states at the present time.[90]

Some states have attempted to secure some of the advantages of a unified court system, by giving to the supreme court supervisory control over all inferior courts, including county courts. The Supreme Court of Michigan is given by the constitution of that state "a general superintending control over all inferior courts." Somewhat similar supervisory powers over inferior courts is conferred upon the supreme courts in Arkansas, Oklahoma, Louisiana, Missouri, Iowa, Wisconsin, Montana, North Dakota, South Dakota, Wyoming, Colorado, and New Mexico.[91] In Ohio and Nebraska the chief justice of the supreme court has some authority over the lower courts through his power to assign judges. In addition to the supervisory powers vested in the Supreme Court of Missouri, the circuit courts of that state have a general "superintending control" over certain local courts, including county courts, justices of the peace, and all inferior tribunals in each county.[92] While some advantage should be derived from vesting such supervisory control in the supreme court, in many cases it will not be able to give enough time to this function, and the supreme court judges, engaged mainly in appellate matters, may not always be the most competent to deal with methods in the trial courts.

Another, and probably better, plan is to vest such control in a judicial council such as has been established in some states and is proposed in the Model State Constitution. As stated by one writer, "A judicial council is a body of men organized for the study of procedural problems and for adopting measures to bring about a system of administering justice."[93] Wisconsin, in 1913, provided for a board of circuit judges, with power to adopt rules and regulations relating to the circuit courts. Judicial councils have been established in Massachusetts, Ohio, Oregon, Connecticut, Rhode Island, North Carolina, Kansas, North Dakota, California, Washington, and Virginia. The composition of such councils varies, but they are usually composed of both judges and members of the bar, appointed either by the governor or the chief justice of the supreme court. Such councils are generally empowered only to study and to advise or suggest changes. The California council, however, has been given a limited power to adopt rules of procedure for the courts of the state.[94]

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[90] W. N. Gemmill, "What Is Wrong with the Administration of Our Criminal Courts," 4 *Journ. of Crim. Law and Criminology* 698-711 (1914). For cases of state selection of local judges and other law enforcement officers see Chapter VIII.

[91] See the following constitutional provisions: Ark., Art. VII, sec. 4; Colo. Art. VI. sec. 2; Iowa, Art. V, sec. 4; La., Art. VII, sec. 12; Mich., Art. VII, sec. 4; Mont., Art. VIII, sec. 2; N. M., Art. VI, sec. 3; N. D., Art. IV, sec. 86; Okla., Art. VII, sec. 2; S. D., Art. V, sec. 2; Wis., Art. VII, sec. 3; Wyo., Art. V, sec. 2.

[92] *Page's Ohio Gen. Code*, vol. 1, sec. 1469; *Const. of Nebr.*, Art. V, sec. 12; *Const. of Mo.*, Art. VI, sec. 23.

[93] C. N. Callender, *American Courts* (1927), pp. 227-29.

[94] On the subject of judicial councils see: C. S. Potts, ''Unification of the Judiciary: A Record of Progress,'' 7 *Journ. of Amer. Judicature Society* 85-91 (1924); Charles H. Paul, ''The Growth of the Judicial Council Movement,'' 10 *Minn. Law Rev.* 85 (1926); J. A. C. Grant, ''The Judicial Council Movement,'' 22 *Amer. Pol. Sci. Rev.* 936-46 (1928); W. F. Dodd, *State Government,* pp. 334-35; R. G. Dodge, ''Judicial Councils,'' 12 *Amer. Bar Assoc. Journ.* 579-82 (1926); C. H. Paul, ''The Judicial Council and the Reform of Judicial Procedure,'' 5 *Ore. Law Rev.* 1-26 (1925).

CHAPTER XIV

CORRECTIONS AND CHARITIES

During the colonial period the only public charity was the relief of the poor by towns and parishes; and the only correctional institutions were county and town jails, while other forms of punishment (then more common than imprisonment) were also under the control of local authorities.[1]

Some centralizing tendencies appeared before the end of the eighteenth century; and others have come into view later, especially since the middle of the nineteenth century. This development has been in several directions. State institutions have been established for convicted criminals and for special classes of dependents and defectives. The care of the poor has become largely a county function, not only in the Southern and far Western states, but also to a large extent in the Middle Atlantic and North Central states, and in New Hampshire. Varying degrees of state administrative supervision over local officials and private charities have been established in many states. The national government, through its pension system and the veteran's bureau, has taken over the control of many who would be in need of relief; and its expenditures for these purposes are now many times that of state and local authorities.

As between state and local authorities, the larger share of public charities and corrections is carried on by the former. Almost two-thirds of the total state and local expenditures for correctional institutions is for state establishments; and two-thirds of the remainder is for county jails. More than half of the total state and local expenditure for public charities is paid out by the states, about a fourth by the counties, and a fourth by cities and minor civil divisions. County expenditures are most important in the North Central and Western states. Town expenditures for poor relief are of most importance in New England, and of some importance in the Middle Atlantic states. Even in the Southern states, a considerable proportion of local expenditure for public charity is by cities, and in several of these states (Maryland, Virginia, Missouri, and Louisiana) this is larger than the county expenditure.

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[1] John L. Gillin, *Criminology and Penology* (1926), ch. 25; Robert W. Kelso, *The Science of Public Welfare* (1928).

Although there has been this extension of state activities in the direct administration of certain forms of charities and corrections, the county remains an important governmental unit for such activities, subject, however, in most states, to varying degrees of supervision and control vested in state authorities.

COUNTY JAILS

Jails were established in the American colonies soon after the early settlements. These were primarily for the detention of persons awaiting trial. But as the methods of punishment changed, and imprisonment became customary, convicted offenders were kept in jail. In some places workhouses were established for vagrants, but were used also as a place of punishment for other offenders. At the end of the colonial period, each of the eleven counties in Pennsylvania had a jail, and four of them had workhouses.[2]

The colonial jails were usually wooden structures; and there was seldom any provision for the separation of different classes of inmates. After the Revolution, criticism of such conditions led to some improvement; but in many places the situation remained as before, especially in the frontier communities.[3]

The status of the county jail was changed by the establishment of state institutions for criminals convicted of the more serious crimes. The first central institution seems to have been in Connecticut, which purchased an old mine in 1773 and used it for a prison. After the Revolution, Pennsylvania used the Walnut street jail in Philadelphia as a general prison. In 1785 Massachusetts provided that persons sentenced to solitary confinement and hard labor should be sent to Castle Island, and in 1803 built a state prison at Charlestown. In 1796, New York began the construction of a state prison in New York city. Other states followed: New

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[2] Harry E. Barnes, *Evolution of Penology in Pennsylvania* (1927), p. 71.

[3] "For instance, the first jail in Champaign County, Illinois, was constructed in 1840; it was a two-story log building, eighteen feet square. The only entrance to the building was by an outside stairway to a door in the second story; from this, entrance to the first floor was secured by a trap-door and ladder. The most unruly prisoners were let down to the first floor." E. H. Sutherland, *Criminology*, p. 223. In a recent report the present Champaign county jail was commended as one of the ten best in the state.

Jersey and Kentucky in 1798, Virginia in 1800, Vermont in 1808, Maryland and New Hampshire in 1812, Ohio in 1816, Pennsylvania in 1818, and Michigan in 1839.

In 1846 Massachusetts established the first state reform school for juvenile offenders, removing these from the local jails and state prisons. By 1872 such institutions had been established in most of the Northern states east of the Mississippi River; and since then they have been provided in most of the other states. New York, in 1877, established the first reformatory for adult convicts, and introduced the indeterminate sentence, with provision for progressive classification and probationary release based on their conduct in the institution. Many other states have established such institutions; and similar methods have been introduced in the state prisons and penitentiaries.

As a result of the development of state institutions, the relative importance of county and other local jails has declined. "It is probable that the convicted prisoners form a larger part of the entire population of jails at present than in 1775, but considerably less than in 1860."[4] The number of institutions in the United States for the detention of persons awaiting trial has been estimated at about 5,000; and the number of persons awaiting trial on an average day at about 50,000. The census of 1910 reported 2,517 county jails and workhouses with 35,000 prisoners serving sentences, and 275,658 admitted during the year on sentences. On January 1, 1923, of 109,075 prisoners in the United States, 17,360 were in county institutions (8,435 in county jails, 5,205 in county workhouses, and 3,781 in county farm and chain groups).[5] The average number of prisoners in county penal institutions was thus fourteen in 1910 and seven in 1923. Reports from a number of states show that from 40 to 60 per cent of those detained in county jails are awaiting trial; and that from 70 to 90 per cent of the county jails in different states have less than 10 persons awaiting trial. In Alabama during 1919-20, 37 of the 67 county jails were empty some time during the year.

County jails are generally under the supervision of the county board, with immediate executive control in the hands of the sheriff. But methods of management vary widely from state to state, and even from county to county within the same state.

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[4] E. H. Sutherland, *Criminology,* p. 401. Also see *ibid.,* pp. 219, 228.

[5] J. L. Gillin, "County Institutions in Rural Social Work," *Proceedings of the 54th Annual Conference of Social Work,* p. 488 (1927).

Conditions in county jails have been criticized for: (1) lack of sanitation, (2) lack of separation of convicted prisoners and persons awaiting trial, and of different classes (children, adults, etc.), (3) lack of employment, (4) lack of essential comforts (no bedding), (5) the fee system for feeding prisoners, and (6) the "kangaroo court" which prevails in many jails.

County jails have been described as the "blackest blotch on American government," as "incubators of crime," as "breeding places and schools for vice," and as institutions of "middle age horrors."[6] The report of the American Prison Association's Committee on Jails in 1925 condemned the present method of jail administration, especially pointing out the absence of proper provisions for the classification and segregation of prisoners. The committee pointed out that even in our largest jails there is to be found no adequate provision for classification and segregation: "As a result, prisoners who are inexperienced in crime and committed to prison for the first time are forced into intimate association with those of the vilest character." The county jail is all too often a filthy and unhealthy place in which to live; "most of them were built years ago, are badly constructed, badly lighted, insecure, and insanitary. Hundreds of them have neither toilet facilities nor baths."[7] An American authority who has given much time to the study of the situation feels that the indictment made by De Tocqueville almost a century ago that the American prisons were the worst in the world still holds for most of our county jails. A president of the International Prison Congress, referring to American jails in 1907, said that there had been "nothing as bad in the history of the world except the prisons of Turkey in the thirteenth century."[8]

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[6] See: "Abominable Conditions in County Jails," 33 *American City* 606-608 (1925); Major Le Roy Hodges, Managing Director of the Virginia State Chamber of Commerce, quoted in 38 *American City* 143 (1928).

[7] Hastings H. Hart, "The Rural Jail," *Proceedings of the 54th Annual Conference of Social Work*, p. 155 (1927).

[8] E. H. Sutherland, *Criminology*, p. 216. Also see J. F. Fishman, *Crucibles of Crime* (1923); S. A. Queen, *The Passing of the County Jail* (1920), ch. 1; J. F. Fishman, "The American Jail," 130 *Atlantic Monthly* 792-805 (1922); J. L. Gillin, *Criminology and Penology* (1926); Schuyler C. Wallace, *State Supervision over Cities in the United States* (1928), ch. 6. In a bulletin published by the North Carolina State Board of Charities and Public Welfare in 1923 conditions in that state were reported as follows: "In a recent study of some thirty county jails in our state four dungeons were found, three of which had been used within the past few weeks." In one of these, a vault

One of the criticisms of the county jail is that prisoners are confined in idleness and that this tends to their further degeneracy. Several states have recognized this evil in the case of state prisons and now provide for employment in state factories. The small number of prisoners in the county jail has made it uneconomical to provide facilities for the employment of prisoners. Indiana in 1915 met this situation by providing that all persons convicted of misdemeanors should be sent to a state farm when their sentences are over thirty days. If less than a thirty day sentence is imposed, they may be sent to this farm at the discretion of the judge. The cost of transporting prisoners to the state farm is paid by the county and the expenses of maintenance by the state. State prisons or penal farms for persons convicted of misdemeanors are used also in a few other states.

Provision is also made in some states for the employment of county prisoners locally. An act of the California legislature of 1921 empowers any county of the state to establish an industrial farm or industrial road camp. It is the purpose of the act "to make possible the substitution of constructive labor for profitless prison confinement in order that those who are charged with or convicted of public offenses and deprived of their liberty may become better citizens because of their disciplinary experience." Such farm is to be under the supervision of a superintendent appointed by the county board; so far as practicable, those in custody thereon are to be employed in productive labor.[9] The county court in Arkansas may, upon petition by a majority of the tax payers of the county, purchase a farm or tract of land and provide for the erection of a county house of correction. In case such house of correction is built, persons convicted of crimes cognizable before justices of the peace and sentenced to imprisonment are to be confined therein, rather than in the county jail. All persons sentenced to the county house of correction are to be required to labor such number of hours as the county court may determine.[10]

Provision is made in some states for the employment of county

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6 x 8 x 19, with concrete walls, ceiling and floor, and a heavy iron door and no windows, 17 negroes were confined at one time. "Two jails had only one apartment, so that there was no provision for separation of races or sexes." *Bulletin, North Carolina Board of Charities and Public Welfare,* Jan.-March, 1923, pp. 6-7.

[9] *Gen. Laws of Calif.,* 1923, Part I, Act 3593.

[10] *Digest of the Stat. of Ark.,* 1921, p. 671. Male convicts may be used on the public roads and highways of the county. *Ibid.,* sec. 5214.

prisoners upon the highways or other public works owned or operated by the county. While the county commissioners in Florida may use the county prisoners for this purpose, in case they deem it to the best interest of the county, they may hire their prisoners to any other county of the state or to the state road department for such labor.[11] Counties in some other states, as Kentucky, Alabama, Louisiana, Mississippi, North Carolina, and South Carolina, are authorized and empowered to hire out county prisoners for labor to private persons or corporations; but other states, as Oregon, by statute specifically forbid counties to enter into any agreement or contract with any private persons, firm or corporation for the employment of any convict.[12]

The leasing of prisoners to private parties has been generally condemned on account of the treatment received by the prisoners. It has been abandoned in all state prisons except Alabama, and should be abolished for county prisoners. As a result of the killing of a young man in one of the county camps in Florida in 1922, it has been abolished in that state.

The detention of children with older persons, many of whom are hardened criminals, has been another serious evil of the county jail. The first special detention home for children was established by the Massachusetts Society for the Prevention of Cruelty to Children in 1880. Detention homes for children have been established in several other states in connection with juvenile courts, beginning with Chicago and Denver in 1903, and San Francisco in 1904.

Provision is now made in twenty-nine states for juvenile detention homes. In five they are required for all counties; nine states require them for larger cities or counties; eleven permit such institutions to be established in any county; and four others permit them for certain counties.[13] The placing of juvenile offenders in jails is now restricted by law in several states: twelve states prohibit the detention of children of juvenile court age in jails; nineteen prohibit the detention of children of certain ages; five others prohibit their detention in jails except for certain offenses as felonies; and thirteen provide that in case they are detained they must be kept separate from adults.

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[11] *Fla. Cum. Stat.*, 1925, secs. 6217-6221. Also see *Sess. Laws of Idaho*, 1927, p. 93; *Rev. Codes of Mont.*, 1921, vol. 4, sec. 12484.

[12] *Carroll's Ky. Stat.*, 1922, ch. 136; *Consol. Stat. of N. C.*, 1919, vol. 1, sec. 1356; *Ore. Laws*, vol. 2, sec. 3542. E. H. Sutherland, *Criminology*, p. 451.

[13] Sophonisba P. Breckinridge and Helen R. Jeter, "A Summary of Juvenile Court Legislation in the United States," *United States Children's Bureau, Publication No. 70* (1920), pp. 29-30.

But the laws relative to the use of county jails for the imprisonment of children and the establishment of special detention homes for them are not always effective in practice. In a study published by the United States Children's Bureau, it is stated that in 1917 children of juvenile court age were detained in some county jails in every state. There were only 212 detention homes or rooms for children in 38 states; of these 163 were publicly supported homes, 24 publicly supported detention rooms, and 23 privately supported detention homes.[14]

The county is in most cases too small a unit to maintain a jail. The number of prisoners is usually too few to warrant securing officers trained for the work they are to perform. Two possible methods have been suggested for improving this situation: the state might take over the jails and operate them as district prisons, or it might leave such district prisons in the hands of local authorities but subject to state supervision. England, the country from which our jail system was imported, has introduced some changes which are worthy of consideration. Locally administered prisons have been abolished and all prisons are operated by the central government, under the control of the Home Office.

The proposal that the state take over the local jails would involve a radical change in policy and would be difficult to carry out. Provision should be made, however, by which counties may unite to maintain a jail jointly. This should also extend to the maintenance of joint jails by counties and cities. While the maintenance of such institutions does not offer the advantages of state maintained district prisons, it is one means of avoiding the high per capita cost of keeping prisoners which results from the small average number found in most county jails. District jails should not only lead to economy in maintenance, but also make it practical to secure competent officers to manage such institutions. The smaller number of prisons would also permit the state to exercise a closer and more satisfactory degree of supervision and control.

Provision has been made in Ohio and Kentucky by which counties may unite in the erection and maintenance of a workhouse for their joint use.[15] Such arrangements should be made in other states.

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[14] Evelina Belden, ''Courts in the United States Hearing Children's Cases,'' *United States Children's Bureau, Publication No. 65* (1920).

POOR RELIEF: THE ALMSHOUSE

In the colonial period poor relief was primarily a function of the towns. In many cases they had no almshouses and the poor were cared for by letting them out to the lowest bidder. In the period 1820-1830 counties in New York began to provide almshouses for the care of the poor and this plan has spread to most of the states. In a number of states outdoor relief remains in the hands of the town or township authorities.[16]

The state has also taken over the care of certain classes which has lightened the burden of local authorities in caring for the poor. The strict settlement laws in New England early forced the central government of these colonies to furnish aid to paupers not chargeable to any town. In Massachusetts a state pauper class was definitely recognized as early as 1794. For a long time money was granted to the towns for the care of these persons; but in 1854 three state almshouses were established for the care of the state poor. Rhode Island also has a state almshouse. Some other states also have a small class of state supported poor.

Other state institutions have been established to care for persons who would otherwise be dependent upon local authorities. A colonial institution for the insane was established in Virginia as early as 1769. A lunatic asylum and an institution for the deaf and dumb were established in Kentucky in 1822; an insane hospital in Massachusetts in 1834; and a state blind hospital in Ohio in 1837.[17] There has been a gradual extension to other states of this movement to establish state institutions to care for certain defective classes. Every state now maintains state hospitals, most commonly for the insane. Two-thirds of the states maintain homes for soldiers and sailors. Several states also have institutions for the care of orphan children and widows of soldiers and sailors. State homes for other dependent children have been established in some states.

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[15] *Page's Ohio Code,* vol. 1, sec. 4142. *Carroll's Ky. Stat.,* 1922, ch. 136.

[16] On the development of poor relief administration see: Robert H. Whitten, ''Public Administration in Massachusetts''; John A. Fairlie, ''The Centralization of Administration in New York State''; Samuel P. Orth, ''The Centralization of Administration in Ohio,'' *Col. Univ. Studies in History Economics and Public Law,* vols. 8, 9, 16.

[17] Sophonisba P. Breckinridge, *Public Welfare Administration in the United States* (1927), Part I, sec. 2.

Thus the state has assumed the responsibility for the care of certain unfortunates who might otherwise become objects of local charity. But responsibility for the care of the poor remains to some extent with local governments, and it is with this problem that we are concerned.

Two systems of maintaining almshouses have developed in the United States. They are the town system which originated in New England, and the county system which developed in Virginia. While township poorhouses are still common in the Northeast, in the Central, Southern, and Western states they are maintained as county institutions.[18]

Almshouses are found in all of the states except New Mexico;[19] they are county institutions in forty states. Pauper relief is a function of the town in Connecticut, Maine, Massachusetts, Rhode Island, and Vermont, while in Pennsylvania and New Jersey the care of the poor may be a function of the county, the town or the township. Not all counties or towns have established almshouses, however; in some cases paupers are boarded out with other counties or towns or in private homes.

The state board of public welfare in Virginia has referred to the county almshouse as "a perfect testimonial of man's inhumanity to man, as well as a conspicuous example of inefficient and reactionary government."[20] In its report on county government in Virginia, the New York Bureau of Municipal Research stated that the county almshouses were "without question, the most unwholesome and incompetent of all agencies for which county governments were responsible."[21] A similar situation exists in other states. American almshouses have been described as "dangerous firetraps," "unsanitary and filthy places," and as an institution where the "gross neglect" of the inmates is attested by the "old, dilapidated, dirty buildings in which they live; by filthy rooms, toilets and beds; by dangerous sanitary conditions; by infrequent visits of doctors; by the lack of nurses; by the squalor and loneliness and depression of the average poorfarm.''[22]

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[18] J. L. Gillin, *Poverty and Dependency* (1926), ch. 15.

[19] "The term 'almshouse' is most frequent in New England and in some of the Eastern states; in the Middle West 'poorhouse' is the most common; in Ohio the legal name is 'county infirmary'; in Indiana it is the 'county asylum'; in Maryland it is the 'county home'; in California the 'county hospital'. . . ." Alexander Johnson, *The Almshouse, Construction and Management,* Charities Publications Committee (1911), p. 7. Quoted in *Bulletin No. 386, United States Bureau of Labor Statistics* (June, 1925). In Ohio such institutions are now called "county homes."

[20] Quoted in *County Government in Virginia,* p. 64.

[21] *County Government in Virginia,* p. 61.

The total almshouse population of the United States in 1922 was 78,090; of this number 2,052 were insane, 12,183 feeble-minded, 1066 epileptic, 3,045 blind, 524 deaf-mute, and 15,415 crippled.[23] The United States Bureau of Labor Statistics, in a report published in June, 1925, gave the results of a study covering 2,183 almshouses, or 93 per cent of the public pauper institutions of the United States. Of these, 137 were found to have no inmates; 787 had from one to ten inmates; 586 had from eleven to twenty-five; 334 had from twenty-six to fifty; 202 had from fifty to one hundred; 80 had from one hundred to two hundred; 36 had from two hundred to five hundred; sixteen had from five hundred to two thousand; and five had over two thousand inmates each. It was thus shown that 1,373 of the 2,046 almshouses of the country, *i.e.*, over one-half, had twenty-five inmates or less, while 38.5 per cent of the total number of institutions had ten or less inmates.

The small population of public almshouses means a lack of economy of operation. With 38.5 per cent of the public pauper institutions caring for ten or less inmates, the need of a larger unit is obvious. The state almshouses in Rhode Island and Massachusetts care for paupers who have no legal residence in a town. The Rhode Island State Almshouse cares for 70.8 per cent of the ''inside poor'' of the state, while the remaining 29.2 per cent are housed in other institutions. The per capita cost of paupers in the state institutions was $326.14, while the per capita cost of all other paupers was $664.44. The Massachusetts State Infirmary has also been able to care for the poor at a lower cost per inmate than the town institutions.

One means of meeting the problem of the small population in almshouses is that of boarding the poor in other county almshouses; in thirty-three counties in Virginia, almshouses have been closed and arrangements made by boards of supervisors for the care of the poor in other county almshouses, in their homes, or in nearby city or private relief institutions.[24] Boards of supervisors in Arizona may contract with the supervisors of any other county of the state for the care of the indigent poor who are a charge upon the county. Such contract must include board, clothing, lodging, medicine, and medical and surgical attendance.[25] New Jersey by legislative act of 1924 provided that a county of that state might contract with another for the care of the poor.[26] Provision is made in other states for caring for the poor in this manner.

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[22] Harry C. Evans, *The American Poorfarm and Its Inmates* (1926).

[23] ''The Cost of American Almshouses,'' *Bulletin No. 386, United States Bureau of Labor Statistics* (June, 1925).

[24] *County Government in Virginia*, p. 61.

Consolidation of counties for the joint establishment and maintenance of almshouses is another means of dealing with the problem of the small number of inmates. State boards, as the state board of welfare in Virginia, are aiding in such consolidations. The New Jersey law of 1924, referred to above, also provided for the establishment by two or more counties of joint county or district welfare houses for the permanent relief of the poor persons of such counties.[27] In Wisconsin, any two or more counties may jointly, by majority vote of the county board of each county, provide for a joint poorhouse, asylum for the chronic insane, tuberculosis hospital, house of correction or workhouse.[28] Illinois, Minnesota, Virginia, and North Carolina also empower counties to establish joint poor farms.[29]

A few cases of the joint establishment and maintenance of county almshouses have been accomplished in Virginia; and the plan is under consideration in several other parts of the state. The New York Bureau of Municipal Research, in its report on county government in Virginia, recommended that "the sale of county farms, the abandonment of county almshouses, and the provision for their inmates, either in district homes supported by coöperating counties, or in private institutions, should be made a major objective of the state and county governments . . ." It seems that an optional law is not sufficient; although North Carolina has a law enabling counties to unite and establish district almshouses, twenty-five counties have built new county homes instead of taking advantage of the law.[30]

Another proposal that has been made is to abolish the county almshouse and to build state hospital-homes "to accommodate the poverty stricken ones from a group of counties, the county grouping to be made with the idea of accessibility to counties included in the district and of having a large enough number of paupers to warrant the employment of sufficient force to care for and direct the institution.'' Thus it was suggested that for a state with three thousand paupers, four institutions, properly distributed, might care for paupers at less expense and with greater efficiency than under the county plan.[31]

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[25] *Rev. Codes of Ariz.*, 1913, p. 865.

[26] *Cum. Supp. to Comp. Stat. of N. J.*, 1911-24, vol. 2, pp. 2736-37.

[27] *Cum. Supp. to Comp. Stat. of N. J.*, 1911-24, vol. 2, pp. 2736-37.

[28] *Wis. Stat.*, 1925, vol. 1, sec. 46.20.

[29] *Ill. Rev. Stat.*, 1925, ch. 107, sec. 29; *Gen. Stat. of Minn.*, 1923, secs. 3178-83; *County Government in Virginia*, p. 61.

[30] *Bulletin No. 386, United States Bureau of Labor Statistics*, p. 50 (June, 1925).

Destitute and dependent children were for a long time cared for in county almshouses. Until the last quarter of the nineteenth century, all such children who were not cared for by private institutions were sent to the almshouse. In 1866, Ohio authorized county homes for children; and, in 1875, New York excluded children over three years of age from poorhouses. The law required that they be placed out in families or in private institutions at public expense. In 1866, a state home for children was established in Massachusetts; and, in 1874, Michigan established a state public school for dependent children.

An effort has thus been made to remove children from the poorhouse. By 1913, fourteen states by law excluded children from almshouses. While 5.8 per cent of the inmates of poorhouses in 1880 were children under five years of age, in 1923 only 1.1 per cent were children. During the year 1922, however, over six thousand children were admitted to the poorfarms of this country; in 1923 there were 1,896 children below the age of fifteen in such institutions.

The laws of Connecticut provide that there shall be established in each of the counties of that state one or more homes for the better protection of children between the ages of four and fourteen years. Such homes are to be used for waifs, strays, children in charge of overseers of the poor, children of prisoners, drunkards or paupers, and others committed to hospitals, almshouses, or workhouses, and all dependent children. These homes are not to be used as a permanent residence for any child, but only for its temporary protection until it is possible to place it in a well selected family.[32]

Counties in Indiana may establish and maintain county orphan asylums, or boards of county commissioners of contiguous counties may unite to maintain such asylums.[33] County boards in Ohio, with the approval of the state board of charities, may submit to the voters of the county the question of establishing a county children's home.[34] In 1923, counties in North Carolina were authorized to establish and maintain homes for indigent children.[35]

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[31] D. L. Edson, ''Standards of Administration of Almshouses or Hospital Homes,'' *Proceedings of the 45th Annual Conference of Social Work,* 1918, p. 262.

[32] *Gen. Stat. of Conn., Revision of 1918,* ch. 90.

Connecticut had established seven children's homes by 1910, Indiana seventeen, and Ohio fifty. There were 7,518 inmates in these institutions. By 1928, 58 of the 88 counties in Ohio had children's homes.

Another method used to care for dependent children is the agency to place them in family homes. By 1923, twenty-five such states agencies had been established; county agencies with such authority have also been established in Connecticut, New York, Pennsylvania, Ohio, Indiana, and North Carolina.[36]

County hospitals have been provided for in about a third of the states to care for a class of dependents who were formerly treated in the poorhouse. As noted in the chapter on health administration, in some cases county hospitals receive only charity cases but in others both charity and pay patients are received. Counties are also empowered in some states to provide for the adequate and proper treatment of charity cases in private institutions.

An effort has been made to improve the conditions in the almshouses by providing specialized institutions for certain classes. Thus the state institutions for the deaf and dumb, the blind, and the insane have removed these classes from the almshouse. County children's homes and county hospitals also remove these classes from the poorhouse. The result has been a small number to care for in the average county almshouse; the solution of this problem seems to be in the use of an area larger than the county.

LOCAL ADMINISTRATION

There is no uniformity of practice in county poor relief administration. The most common plan is for the county board to administer poor relief directly. As a body it usually has control and supervision over the county almshouse. The two systems used for the operation of almshouses are (1) direct management by county officials, and (2) the contract system. Where the direct management plan is used, the public officials in charge of poor relief employ a superintendent, or keeper, to operate the almshouse. Under the contract system, the almshouse and farm are leased to some one to keep the poor. The system of direct management is more prevalent, being used in 88 per cent of the almshouses of the country. The contract method of operation has developed many evils, chief among these being the inadequate care given the inmates; under this plan of operation the object of the keeper is profit. In a study made by the United States Bureau of Labor Statistics in 1925, cases of the leasing of almshouses were found in all states except New Hampshire, New York, Rhode Island, Ohio, Wisconsin, North Dakota, and Wyoming. This method of operation was found to be a common practice in Alabama, Arkansas, Kentucky, Mississippi, Tennessee, Texas, Missouri, Kansas, Nebraska, and South Dakota. Although the system of leasing almshouses by contract is prohibited by law in Connecticut, Indiana, and Utah, some cases of contract operation were found in these states.[37]

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[33] *Ind. Ann. Stat.*, vol. 2, secs. 4306-24.

[34] *Page's Ohio Gen. Code,* vol. 1, sec. 3077.

[35] *Public Laws of N. C.,* 1923, ch. 81.

[36] J. L. Gillin, *Poverty and Dependency.*

Outdoor relief for the poor is ordinarily given by county officials, but in New England the town is the unit of poor relief administration, and in some other states the township is used. In some states outdoor relief for the poor is given by township, county, city and state officials. The members of the county board often administer outdoor relief individually, each in his own township or district and report on such work at each meeting of the county board. The Report of the Special Joint Committee on Taxation and Retrenchment in New York, in considering the question of organization for relief work, pointed out that for outdoor relief of the poor, "centralization of responsibility within the county seems essential. There must be coördination of agencies public and private by a central authority who gives all his time to the work and who has the necessary training and experience to make the work worth while." [38]

Other methods of administering county poor relief are used. In California, Michigan, and New York there is an elected official, usually known as county superintendent of the poor, who has charge of poor relief.[39] County boards in Wisconsin have been authorized to employ some competent person to have charge of all outdoor poor relief.[40] The county court of every county in West Virginia appoints an overseer of the poor for each magisterial district in the county.[41] In Virginia county superintendents of the poor are appointed by the circuit courts, while overseers of the poor are elected by the people, one being elected from each magisterial district. The former have supervision of the county almshouse, while the latter administer outdoor poor relief.[42] The general supervision of all paupers is vested in the ordinaries of some counties in Georgia.[43] The law provides that, if necessary, the ordinaries shall appoint a commissioner of the poor.[44]

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[37] *Bulletin No. 386, United States Bureau of Labor Statistics* (June, 1925).

[38] *Report of the Special Joint Committee on Taxation and Retrenchment,* 1923, p. 76.

[39] *Bulletin No. 386, United States Bureau of Labor Statistics* (June, 1925).

Greater use is made of the township for poor relief in some states than in others; in general, the township is used more for outdoor relief, while the county is the unit of administration for indoor relief. In counties under township organization in Illinois, the supervisors of the respective townships are ex officio overseers of the poor. Where the county is not under township organization, the county board designates some justice of the peace or other suitable person in each precinct to act as overseer of the poor.[45] Township trustees are ex officio overseers of the poor within their respective townships in Indiana. These overseers grant such temporary aid as may be necessary and as paupers become permanent charges they are removed to the county poor asylum.[46] Township trustees in Iowa, subject to the rules adopted by the board of supervisors, provide for the relief of poor persons who should not in their judgment be sent to the county home.[47] In Kansas, township trustees act as overseers of the poor except in the case of incorporated cities, where the governing body exercises this function. If the county has over 22,000 inhabitants, the county board may appoint a commissioner of the poor who has, under the control of the board, general care and supervision of the poor of the county.[48] North Dakota also uses the supervisors of the respective townships as ex officio overseers of the poor, but limits the amount of aid that may be given by a supervisor without the approval of the county board.[49] The statutes of Ohio provide that temporary and partial relief for paupers shall be given in their homes by townships and cities, while counties must care for those who are permanently disabled or have become paupers and to such others as can only be satisfactorily cared for at the county infirmary or under county control.[50]

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[40] *Laws of Wis.*, 1927, ch. 254.

[41] *Barnes' W. Va. Code*, 1923, ch. 46, sec. 1.

[42] *County Government in Virginia*, pp. 61-62.

[43] County boards of commissioners have been established by special act in most counties.

[44] *Ann. Code of Ga.*, 1914, vol. 1, secs. 541, 550.

[45] *Ill. Rev. Stat.*, 1925, ch. 107, secs. 18-19.

[46] *Burns' Ind. Stat.*, 1926, vol. 3, secs. 12255-95.

[47] *Code of Ia.*, 1927, sec. 5320.

[48] *Rev. Stat. of Kas.*, 1923, secs. 39-301 ff.

Minnesota uses both the county and town system of poor relief. Change may be made from one system to another by vote of the county board, or if one-fourth of the voters of the county petition therefor, the question of changing from the system then in force to the other is submitted to the voters. In counties using the county system of poor relief, the members of the county board are superintendents of the poor, while in counties having the town system, the town boards and city and village councils are superintendents of the poor. In a limited class of counties in Minnesota, there is a board of three poor commissioners appointed by the chairman of the county board with the approval of the judges of the district court. They have all powers and duties relative to the care of the poor which boards of county commissioners have in counties having the county system of poor relief.[51]

SPECIALIZED WELFARE WORK

Some states have provided for special boards for particular phases of welfare work. This has developed especially in child welfare work, several states placing special emphasis upon this work.[52] County commissioners in Ohio, may, when in their judgment the best interests of the dependent wards of the county will be served, and with the approval of the state board of charities, appoint a county child welfare board of four members, two of whom must be women. The powers and duties of such boards are defined by statute.[53] In each county of Indiana there is a board of six persons known as the board of children's guardians, appointed by the court of the county having juvenile jurisdiction. This board has the care and jurisdiction of neglected and dependent children in the county. The board of county commissioners may provide and maintain a house of suitable size and convenience for the use of the board in caring for the children placed under its custody and control.[54]

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[49] *Comp. Laws of N. D.* (1913), vol. 1, secs. 2496, 2508.

[50] *Page's Ohio Gen. Code,* vol. 1, sec. 3476.

[51] *Gen. Stat. of Minn.,* 1923, ch. 15.

[52] See ''County Organization for Child Care,'' United States Department of Labor, *Children's Bureau Publication No. 70.*

[53] *Laws of Ohio,* 1919, p. 533.

In Minnesota the county work is under the supervision of the children's bureau of the state board of control. The board may, when requested by the county board, appoint in each county three persons, at least two of whom must be women, who, together with a member designated by the county board from their own number, and the county superintendent of schools, constitutes a child welfare board. This board is to perform such duties as may be required of it by the state board of control. While such boards are appointed only upon request of the county board, seventy-seven boards had been appointed in the eighty-seven counties up to 1925.[55]

Arizona, by act of 1921, provides that the superior court of each county shall appoint four persons, at least two of whom shall be women, and ''all of whom shall be experienced as to the requirements for the support and maintenance of children.'' It is the duty of the members of the board to investigate the conditions surrounding any child within the county reported to it as being an orphan, waif, neglected or abandoned child and to report the results of such investigation to the judge of the superior court and to the state child welfare board.[56] Alabama, by act of 1923, also provides for county boards of child welfare. Such boards are composed of three persons appointed by the judge of the juvenile court of the county having jurisdiction in children's cases upon request of the county commissioners or board of revenue and the county board of education, together with the judge of the juvenile court, the chairman of the county board of education, and a member designated by the county board of revenue. The board may employ an executive agent to be known as the county superintendent of child welfare to assist it in its work.[57]

It seems questionable whether a separate agency should be established for caring for juvenile cases. Rather should all of the charitable work of the county be placed under the control of one authority.[58] The Special Joint Committee on Taxation and Retrenchment in New York, in its report for 1923, stated that in its opinion there was ''no justification for the creation of new and independent agencies to deal with children . . . but rather every reason why responsibility for the care of dependent children should be centralized in a county department with full responsibility for all relief whether of children or adults.'' If it seemed desirable, a coöperating committee of responsible citizens might be appointed by the board of supervisors to serve in an advisory capacity but without any administrative responsibility. It was stated that not only had the creation of county boards of child welfare resulted in friction between local authorities but that a ''considerably added burden'' of taxation was placed upon counties; ''certainly it is uneconomical to have two agencies, each dealing with a part or phase of a general problem which is really one from an administrative point of view.''[59]

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[54] *Ind. Ann. Stat.*, 1926, vol. 2, secs. 4344-51.

[55] *Gen. Stat. of Minn.*, 1923, sec. 4457. Also see Charles F. Hall, ''Developing the Local Program,'' *Proceedings of 52nd Annual Conference of Social Work,* p. 99 (1925). On the relationship of the county and the state in child welfare work see H. Ida Curry, ''County Programs of Child Welfare,'' *Proceedings of the 52nd Annual Conference of Social Work,* p. 95 (1925).

[56] *Laws of Ariz.*, 1921, ch. 53.

[57] *Code of Ala.*, 1923, vol. 1, pp. 530-33.

The provision for mothers' pensions is another development in the field of county charities. Mothers' pensions were first provided for in Illinois and Missouri in 1911. It was pointed out by the chief of the United States Children's Bureau in 1927 that, while state-wide laws providing for mothers' pensions had been passed in forty-two states, the proportion of the population living in localities where aid was actually granted varied from 98 per cent of the population in one state to less than 5 per cent in another.[60] While in several states a part or all of the funds are provided by the state, in eight states all is paid by the county, a special tax being levied for this purpose. Various methods are used for administering such pensions: in twenty states the administration is in the courts, usually the juvenile courts; in ten states it is by the county board; and in other states other methods are used. In Pennsylvania it is controlled by a board of women trustees in each county appointed by the governor; and in Vermont the administration is in the hands of the state board of education.

County boards are now authorized to grant blind pensions in several states. It is not possible to consider all of the variations in these laws, but some of the significant differences may be noted. County commissioners in New Hampshire may not grant over $150 per year; in Illinois the county board is required to grant a pension of $365 a year; and in California counties are limited to a tax of two-tenths of one mill per dollar on the assessed valuation of the property of the county for creating a fund for the relief of the blind.[61] In Illinois the state pays to the county one-half the amount expended for blind pensions.

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[58] See ''County Organization for Child Care and Protection,'' *Children's Bureau Publication, No. 107.*

[59] *Report of the Special Joint Committee on Taxation and Retrenchment,* 1923, p. 84.

[60] Grace Abbott, ''Standards of Rural Child Welfare,'' *Proceedings of 54th Annual Conference of Social Work,* p. 30 (1927); ''Laws Relating to Mothers' Pensions,'' *Children's Bureau Publications, No. 63* (1919).

Boards of county commissioners in Kansas may by unanimous vote pay a monthly pension not to exceed fifty dollars per month to any person over the age of twenty-one who has lost both hands or both feet, or both eyes, or is otherwise disabled from performing manual labor and whose parents or relatives are not financially able to care for them. No pension may be granted in excess of twenty-five dollars per month, however, unless approved by a majority vote of the electors of the county voting on the proposition.

An old age pension system has been in operation in Alaska since 1915; and since 1923 counties have been authorized to grant old age pensions in eleven states: Montana in 1923, Nevada and Wisconsin in 1925, Colorado, Kentucky and Maryland in 1927, California, Minnesota, Utah and Wyoming in 1929, and New York in 1930. In Montana 42 counties have provided such pensions; but only a few counties in the other states.[62]

UNIFIED ADMINISTRATION

Within recent years there has been some recognition of the need of a comprehensive plan of public welfare organization for the county having control over all charitable and correctional work. In North Carolina the county board of education and the board of county commissioners must in joint session elect a county superintendent of public welfare to serve for a term of two years. No one may serve as county welfare commissioner who has not received a certificate of his fitness from the state board of charities and public welfare. In counties having a population of less than 32,000 the county superintendent of schools becomes ex officio county superintendent of public welfare in case no appointment is made as the law provides. The appointment of this officer is mandatory in the case of counties having a population of over 32,000. While only twenty-nine counties are required by the law to provide superintendents of public welfare, fifty-five had done so up to 1926.

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[61] *Public Laws of N. H.*, 1926, vol. 1, p. 422; *Laws of Ill.*, 1927, p. 202; *Gen. Laws of Calif.*, 1923, part 1, Act 773.

[62] *Bulletin of the U. S. Bureau of Labor Statistics*, No. 489, Oct. 1929.

The state board of charities and public welfare also appoints, in each county of the state, three persons who constitute a county board of charities and public welfare. It is the duty of this board to advise with and assist the state board with the work in the county, to make such visitations and reports as the state board may request, and to act in a general advisory capacity to the local authorities in dealing with questions of dependency and delinquency, distribution of poor funds, and social conditions generally.

In discussing the results of the county unit plan of public welfare administration in North Carolina it has been stated that there has been not only a creditable showing numerically under the law but that there has been also a "steady growth in the amount of work done, and a constant improvement in quality. There has developed, too, a steady professional spirit among the county superintendents of public welfare, and continuous improvement in their qualifications and methods." But despite the improvement that had been made it was stated that seven years after the passage of the act providing for the county unit plan there was "no county organized successfully on anything like a complete or satisfactory basis."[63]

County boards of welfare in Florida and Arkansas are selected by state authorities. The governor of Florida is authorized, upon the recommendation of the board of county commissioners to appoint a commission in each county, to consist of six members, to inspect and visit all public and private and charitable institutions within the county, including institutions maintained by religious or educational institutions. The commission must make an annual visit to such institutions for the purpose of ascertaining the treatment of the inmates and the general conditions of the institutions.[64] The charities and correction commission of Arkansas may appoint a county board of public welfare in each county. These boards have similar powers and duties of inspection within their respective counties as the state commission has over state institutions. The county boards make such reports to the state commission, under whose direction they work, as it may direct.[65]

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[63] Howard W. Odum, "The County Unit as a Basis of Social Work and Public Welfare in North Carolina," *Proceedings of 54th Annual Conference of Social Work*, pp. 461-67 (1926); *Consol. Stat. of N. C.*, 1919, vol. 2, secs. 5014-18; *Public Laws of N. C.*, 1921, p. 385.

[64] *Rev. Gen. Stat. of Fla.*, 1920, vol. 1, secs. 691-93. For statute passed at the 1923 session and applicable to counties of above 100,000 population, see *Fla. Cum. Stat.*, 1925, ch. 25.

The Missouri legislature at its 1921 session authorized county courts in counties having less than 50,000 population to appoint in their discretion a county superintendent of public welfare and such assistants as is deemed necessary. It is the duty of the county superintendent of public welfare to administer all of the funds of the county devoted to outdoor relief and allowances to needy mothers; to investigate conditions of living among the poor, sick and delinquent in the county; and to make reports to the state boards of charities and corrections and to the proper local authorities as to any changes in conditions or legislation necessary to prevent or reduce poverty, crime or distress in the state. He acts as the agent of the county court in investigating all requests for charity and applications for blind pensions. He also assumes the duties of the probation or parole officers and of the attendance officer of such county. The Missouri law differs from that in North Carolina in that it is optional with the county and the supervisory authority of the state is much less extensive.[66]

An act passed in Virginia in 1922 empowers the circuit court of each county of the state and the corporation or hustings court of each city to appoint from a list approved by the state board of public welfare, a county or city board of public welfare. Any of the members of such local boards may be removed at any time for cause by the state board of public welfare, by and with the approval of the court making the appointment. It is the duty of a local board of public welfare to keep itself informed as to the conditions and management of all institutions of a charitable or penal nature in the county or city; and it must interest itself in all matters pertaining to the social welfare of the people of the county or city and coöperate with the juvenile and domestic relations' courts and all other agencies operating for the social betterment of the county or city. The local board of public welfare may, when it is deemed advisable and expedient, elect from a list submitted by the state board, a superintendent of public welfare and such assistants as the local board may deem necessary. Two or more counties, or a city of the first class and a county, may unite in providing for a local superintendent of public welfare, and the expenses incident to such employment may be divided in such manner as they may agree upon.[67]

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[65] Crawford and Moses, *Digest of Stat.*, 1921, sec. 1024.

[66] *Supp. to Mo. Rev. Stat.*, 1927, pp. 498-500.

In each county in Indiana the judge of the circuit court may, and upon the petition of fifteen reputable citizens, must, appoint six persons, who constitute a board of county charities and corrections. The board must meet quarterly and may meet as much oftener as they think necessary. It is their duty to visit the county charitable and correctional institutions and to make suggestions as to improved administration. They must make annual reports to the board of county commissioners, a copy of which is transmitted to the board of state charities.[68] Boards of supervisors in California may, and upon the petition of one hundred electors of the county must, appoint a county board of public welfare. It is the duty of the board to supervise all county charitable and correctional institutions. Fifteen counties in the state had organized such welfare departments up to 1925.[69]

The Illinois legislature by act of 1925 provided for a bureau of public welfare in counties having a population of 500,000 or more. The bureau consists of one director and such number of assistants as may be determined by the board of county commissioners.[70]

The Report of the Special Joint Committee on Taxation and Retrenchment in New York in 1923 proposed a department of public welfare in the county.[71] The committee stated that the evidence presented to it indicated that ''nothing is more necessary in the administration of poor relief, child welfare, health and hospitals than a bringing together of the scattered duties that have devolved upon the counties and towns from time to time. The present system of separation in the administration of these inherently related functions is wasteful.'' The county department of public welfare proposed by the committee would be under the direction of a full time commissioner appointed by the executive authority of the county. The department would have two subdivisions, a bureau of health and a bureau of social service. The committee recommended that provision be made for the appointment by the commissioner of public welfare of an advisory committee of representative citizens of the county upon whom he might call to aid him in developing his program.

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[67] *Va. Code,* 1924, secs. 1902-1 ff.

[68] *Ind. Ann. Stat.,* 1926, vol. 2, secs. 4352-55.

[69] *Gen. Laws of Calif.,* 1923, Part II, Act 6403; State Department of Public Welfare, ''Public Welfare Organizations in California,'' pp. 22-28 (1925).

[70] *Laws of Illinois,* 1925, pp. 264-66.

[71] *Report of the Special Joint Committee on Taxation and Retrenchment,* 1923, pp. 99-100; Elsie M. Bond, ''Poor Law Reform in New York State,'' 18 *Nat. Mun. Rev.* 617 (1929).

By an act of 1929, each county in New York is made a county welfare district, with an elected county commissioner of public welfare, assisted by town and city public welfare officers. The board of supervisors of any county may establish a county system of administration.

In a recent study of county welfare organization in Ohio the ''utterly headless and decentralized'' plan of administration was condemned. The situation in that state was summarized as follows: ''Responsibility for the conduct of charitable and correctional activities is divided among at least five separate bodies. The handling of blind relief, non-resident relief, soldiers' burials, and tuberculosis care and the general management of the county home are vested in the county commissioners. The administration of mothers' pensions, the commitment of dependent and crippled children, and the control of juvenile probation rests with the juvenile court. The direction of adult probation is in the hands of the common pleas court. The soldiers' relief commission administers soldiers' relief, and the children's home board manages the children's home and directs local child placement work. If the county maintains a general or tuberculosis hospital, it is usually under the control of a separate board. A more scrambled-up administrative system would be difficult to find. There is no single agency in a position to plan a county welfare program, or to coördinate, supervise and direct the operation of welfare activities. The only central control which exists is that exercised by the county commissioners through the power of appropriation.'' [72]

One of the advantages to be derived from the creation of a county board of public welfare is the possible correlation of the charitable work of counties and cities. North Carolina provides that cities and counties may consolidate their charities under the supervision of the county board of charities and public welfare. A county and a city of the first class in Virginia may unite in providing for a local superintendent of public welfare, dividing the expenses in such manner as they may agree upon.

A full time county superintendent of public welfare should be of value in correlating the public and private charitable work in the county. Thus in Virginia, when county superintendents of public welfare are appointed, it is their duty "to foster coöperation and intelligent division of work between all public and private charitable social agencies in the county or city to the end that public resources and charitable donations may be conserved and the needs of the county or city be adequately cared for." Provision has been made in some states for the coöperation of private and public agencies in charitable work. Under the "Iowa plan" the county board is induced to appoint as its overseer of the poor the paid secretary of the welfare society in the county seat. The salary is paid jointly by the county and the welfare society. Boards of supervisors in some states, as Michigan, Kansas, and Mississippi, have been authorized to appropriate money to aid certain designated types of charitable and benevolent associations.[73]

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[72] ''County Welfare Organization in Ohio,'' published by The Ohio Institute (November, 1928).

STATE SUPERVISION

There has been a marked development of state control and supervision over counties in the administration of charities and corrections. The first state board of charities was established in Massachusetts in 1863, followed by Ohio and New York in 1867, Illinois, Pennsylvania, Rhode Island, and North Carolina in 1869, Wisconsin and Michigan in 1871, and Connecticut and Kansas in 1873. By 1913 central authorities of this nature had been established in thirty-eight states.[74]

In some cases the work of these state authorities is limited to supervision and control over state institutions; but supervisory control over county authorities has been established in thirty states.[75] In all of these states provision is made for state inspection of local institutions, and in about half of them for reports by local authorities. Advice may be given by the inspectors, or may be secured on application to the state authorities. The power granted to state authorities is sometimes broad and general; but in some states it refers to specific objects and practices, as sanitary conditions or the treatment of inmates. Thus, in Massachusetts, the department of public welfare must visit all almshouses maintained in towns and it may visit and inspect places where town paupers are supported in families.[76] The state welfare department in Michigan must at least once a year visit and examine into the condition of all county infirmaries, jails, and places of detention for juveniles. When the department finds that such institutions are insanitary or dangerous to the life or health of the inmates, or constructed so as not to permit of a proper classification of inmates, it may require that the necessary changes be made.[77]

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[73] See J. L. Gillin, *Poverty and Dependence* (1926), p. 172; H. W. Odum and D. W. Willard, *Systems of Public Welfare* (1925), pp. 213-19; H. Ida Curry, "The Extra-Institutional Services of County Institutions," *Proceedings of the 54th Annual Meeting of the Conference of Social Work*, p. 494 (1927); *Public Acts of Mich.*, 1925, p. 55; *Hemingway's Miss. Code*, Supp. 1921, sec. 3811 c; *Laws of Kas.*, 1927, ch. 154.

[74] Sophonisba P. Breckinridge, *Public Welfare Administration in the United States* (1927), pp. 237-92, 557.

[75] Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Wisconsin. Schuyler Wallace, *State Administrative Supervision over Cities*, pp. 191, 207.

An agent of the board of public charities in Pennsylvania is required by law, at least once in every two years, to visit and examine into the condition of the city and county jails and prisons.[78]

The board of charities and corrections in Virginia is authorized "to visit, inspect and examine, once a year or oftener, state, county, municipal, and private institutions which are of an eleemosynary, charitable, correctional or reformatory character, or which are for the care, custody, or training of the defective, delinquent, or criminal classes." [79] The state board of charities in Montana must investigate in regard to jails, houses of correction and other places in which persons suspected of crime are confined, ascertaining by visits or otherwise, their sanitary condition, their arrangement for the separation of hardened criminals from juvenile offenders, and from persons suspected of crime.[80]

In eighteen states plans for the construction or remodeling of jails or almshouses, or both, must be submitted to state authorities.[81] In Pennsylvania, before any county prison or almshouse may be built, the plan of construction must be submitted by the commissioners of the county to the state board of public charities, a body of five members appointed by the governor and senate, and the plan must be inspected and approved by the board before the county may proceed with construction.[82] In Wisconsin, the state board of control, with the advice and approval of the state chief engineer, must fix reasonable standards for the construction, repair and maintenance of poorhouses and jails with respect to their safety, sanitation, and "adequacy and fitness for the needs of the community which they are to serve." No new building may be constructed until the plans have been approved by the state authorities. Semi-annual inspections must be made with respect to the safety, sanitation, adequacy, and fitness of such building.[83]

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[76] *Gen. Laws of Mass.,* 1921, vol. 1. ch. 121, sec. 7.

[77] *Comp. Laws Mich.,* Supp. 1922, ch. 64, sec. 1982.

[78] *Pa. Statutes Complete to 1920,* secs. 2567-68.

[79] *Va. Acts,* 1922, ch. 105.

[80] *Rev. Codes of Mont.,* 1921, vol. 1, sec. 331.

[81] Alabama, California, Illinois, Indiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and Wisconsin. Schuyler Wallace, *State Administrative Supervision over Cities,* pp. 195, 210.

In some states power has been conferred on state authorities to issue rules and regulations. In Alabama, authority is given to "formulate such rules and regulations as he may deem necessary with reference to hygiene, sanitation, cleanliness, and healthfulness of all jails and almshouses in the state"; and similar powers have been granted in Massachusetts, New York, Pennsylvania, Wisconsin, and Oregon. In several other states the state authority may prescribe the form of reports that must be made by local offices.[84]

Grants in aid or state subsidies have been used in only six states as a means of supervising and controlling local charities.[85] In five states they are used for the support of needy children, while in Massachusetts they are used to aid towns for the support of non-residents.

Alabama and Vermont have taken the most advanced steps towards state control over jails; in these states the expenditures for the administration of jails are paid out of the state treasury.

CONCLUSIONS

A study of the administration of the public welfare work in the American county, and more particularly the situation in jails and almshouses, leads to the conclusion that the county is still the dark continent of American politics. While some efforts have been made to improve the charities and correction work of the county, much remains to be done. Further state supervision offers one means of bringing the standards of administration to a required minimum. In order to meet this standard most counties must reorganize their public welfare agencies. The unification of all welfare agencies in the county, both public and private, offers one method of improvement; the North Carolina, Missouri, and Virginia laws indicate a possible means of securing this unification. A full time public welfare officer, such as is provided for in these laws, offers the best means of securing adequate consideration for the public welfare work of the county.

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[82] *Pa. Stat. Complete to 1920*, sec. 2575.

[83] *Wis. Stat.*, 1925, vol. 1, sec. 46.17.

[84] Schuyler Wallace, *State Administrative Supervision over Cities*, pp. 198, 210.

[85] Massachusetts, Maine, Connecticut, Virginia, Wisconsin, and California.

The county is, in many cases, too small a unit for the maintenance of jails and almshouses. Provision for district or joint almshouses and jails is an attempt to meet this problem; the use that has been made of optional laws indicates that such a plan will not be entirely satisfactory. As the state has assumed the direct responsibility for the care of other classes, as the blind, the deaf, the dumb, and the insane, it may also find it necessary to assume the care of those who are now confined in jails and almshouses. Herein seems to lie some of the possible means of improving the administration of charities and corrections.

CHAPTER XV

HEALTH ADMINISTRATION

HISTORICAL DEVELOPMENT[1]

In our early colonial history, and also in the early part of our national existence, public sanitation was almost exclusively a function of local government. As epidemics furnished occasion, the towns through their regular officers, or more often through special committees, would take such preventive measures as in each case seemed best. It was not until the close of the eighteenth century that permanent boards of health were established, and for three quarters of a century such boards were confined almost exclusively to the larger cities.

The earliest measures for the protection of public health were taken by the coast cities to prevent the introduction of disease from foreign countries. This was first handled by the general municipal authorities, but at the close of the eighteenth century cities were beginning to establish special health authorities. Such boards were created in Baltimore in 1793; in Philadelphia in 1794; and in New York and Boston in 1799. The movement continued in the period 1800 to 1850 and spread to several interior cities.[2]

Massachusetts, in 1787, and Connecticut, in 1805, made provision for a system of town boards of health in all towns. Early state laws making provision for the establishment of local health boards were also passed in Rhode Island in 1832; Michigan in 1846; Wisconsin in 1849; New York in 1850; Maine in 1853; Illinois in 1865; and Minnesota in 1866. The Illinois and Minnesota laws applied to townships only. These laws were permissive in nature so that all towns did not establish health authorities under them. Some continued to use their general municipal officers for purposes of health administration; and in some the health boards were composed of municipal officials.

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[1] For the development of public health administration in the United States see: R. D. Leigh, *Federal Health Administration in the United States* (1927), ch. 1; J. W. Kerr and A. A. Moll, "Organization, Powers, and Duties of Health Authorities," *Public Health Bulletin*, No. 54, August, 1912. United States Public Health Service; J. M. Mathews, "State Public Health Administration," *Report of the Efficiency and Economy Committee, Illinois*, 1915, pp. 670-90; J. A. Tobey, *The National Government and Public Health* (1926), pp. 68-69.

[2] Among the cities establishing special health boards in the period following 1800 were: Charleston, 1815; Pensacola, 1822; Mobile, 1825; Providence, R. I., and St. Louis, 1832; Portland, Me., Wilmington, Dela., and Columbus, Ga., 1833; Chicago, Rochester, N. Y., and Monroe, Mich., 1834; Madison, Wis., 1836; Elmira, N. Y., 1840; and New Orleans, 1841.

Little progress was made in health administration until the last quarter of the nineteenth century. The situation which existed in the period following the Civil War has been summarized as follows: "Before 1870 the only local governmental activities which deserve the title of public health work were those in connection with recurrent epidemic diseases such as smallpox, yellow fever, and cholera. In the case of the most frequent of these, smallpox, the technique of vaccination had been devised and more or less regularly applied. In almost all localities there were pest houses and local police regulations for the isolation or quarantine of the persons afflicted with epidemic diseases. The public provisions were essentially those for emergencies; they did not require routine administration. The power of quarantine was, therefore, often in the hands of the general executive and police authorities of the community. Such boards of health as existed were created during epidemics; with the passing of the emergency they usually subsided into a dormant condition."[3]

In the period following the Civil War the states began to take a more active part in public health administration and it was no longer looked upon as a purely local function. The first state board of health was established in Louisiana, in 1855, for the purpose of maintaining quarantine at New Orleans. Massachusetts, in 1869, established a state board of health for the purpose of carrying on more general health activities. Since that time the movement has continued to spread until every state now has a board of health or other agency having health functions to perform.[4] In some cases this is a board with an executive health officer; and in other states it is a single commissioner, serving either with or without an advisory council. Health administration in a few states has been placed under the control of a state department of welfare, or department of health and welfare.

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[3] R. D. Leigh, *op. cit.*, p. 8.

[4] For the date of establishment, size, and method of selection of state health boards see *Report of the Efficiency and Economy Committee, Illinois*, 1915, pp. 673-4. For changes in the organization of state boards of health which have been brought about by administrative reorganization in some states see R. D. Leigh, *op. cit.*, pp. 13-14.

Counties were slower in developing health administration than either cities or states. It was only in a few Southern states where the county was the primary unit of local government that counties organized boards for quarantine purposes, as was done by cities in the earlier period, and this only in a few seacoast counties. Not until after 1900 was serious consideration given to the question of health administration in the rural areas, and its improvement considered one of the important functions of the county.

COUNTY HEALTH ADMINISTRATION

The scope of the present work does not permit a consideration of the organization of state health departments. The discussion must be limited to the organization of local health authorities, and the relations between state and local agencies. In the case of the local authorities chief consideration will be given to the problem of health administration for local rural areas, or as one of county government. Public health administration in cities will be considered only in so far as it is related to the problem of county health administration. This resolves itself primarily into the problem of the proper relation between the city and the county health authorities.

It is a common opinion that the country is an especially healthful place in which to live; and it may be supposed from this that the problem of rural health administration is not of great importance. Surveys and studies of rural health conditions by the United States Public Health Service and other agencies indicate that, with the improvement of sanitary conditions in cities, this impression is no longer correct. In the original registration states, the rural districts since 1920 have had a higher death-rate than the cities. In 1925, in thirteen of the thirty-three states in the birth registration area, the rural infant mortality rate was higher than the urban rate.[5]

The total amount appropriated to state health departments in 1925 was about $12,000,000; the amounts varied from $8,800 in

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[5] Grace Abbott, ''Developing Standards of Rural Child Welfare,'' *Fifty-fourth Annual Conference of Social Work*, 1927, p. 34.

Nevada to $2,000,000 in Pennsylvania. The national government spent about $15,000,000 on public health activities. The cities of the United States having a population of 30,000 or above spent about $28,000,000 for health purposes in 1922. Counties and rural communities spent about $5,000,000 for health work. Thus of the total amount, $60,000,000, spent by all official agencies—national, state, and local—for health purposes, the counties and rural areas spent only one twelfth.[6]

The organization for county health purposes in the United States shows great variation. County boards of health have been authorized by law in about one half of the states. In some states, as in Kansas, Idaho, and Washington, the board of county commissioners constitutes the county board of health.[7] In other states the county board of health consists of the county board sitting with some other officer or officers of the county ex officio. In Oregon, the county judge and county commissioners ex officio constitute the county board of health; the Nevada county board of health consists of the board of commissioners, the sheriff, and the local health officer of the county.[8] The county board of health in Montana consists of the county commissioners and one physician legally authorized to practice medicine and surgery in the state, appointed by the county commissioners.[9]

County boards of health may be composed of certain officers ex officio sitting with others appointed in various ways. In Nebraska, the county health board is composed of the sheriff, the county superintendent of schools, and a physician selected by the county board.[10] In North Dakota, it is composed of the state's attorney, the county superintendent of schools, and a superintendent of public health appointed by them.[11] The North Carolina board is composed of the chairman of the county commissioners, the mayor of the county town, the county superintendent of schools, and two physicians appointed by the three above-named officers.[12] In Georgia, the county superintendent of schools, the chairman of the board of roads and revenues of the county, and one reputable physician elected by the grand jury of the county, constitute the county board of health.[13]

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[6] J. A. Tobey, *op. cit.*, p. 69.

[7] *Idaho Comp. Stat.*, 1919, sec. 1655; *Rev. Stat. of Kas.*, 1923, sec. 65-201; *Comp. Stat. of Wash.*, 1922, vol. 2, sec. 6091.

[8] *Ore. Laws*, 1920, vol. 2, sec. 8369; *Rev. Laws Nev.*, 1923, vol. 3, p. 2891.

[9] *Rev. Codes of Mont.*, 1921, vol. 1, sec. 2473.

[10] *Comp. Stat. of Nebr.*, 1922, sec. 8222.

[11] *Comp. Laws of N. D.*, 1913, vol. 1, sec. 404.

[12] *Consol. Stat. of N. C.*, 1919, vol. 2, sec. 7064.

State authorities have in some cases been given control over the selection of local boards of health; more often, however, the central government's control is limited to the selection of the local administrative health officers rather than the boards of health. The state board of health in Virginia annually appoints three residents of each county, at least one of whom must be a regularly licensed physician, who, with the county clerk and the chairman of the board of supervisors constitute the county board of health.[14] In Kentucky, the state board of health appoints "three intelligent and discreet licensed physicians" in the county, who, together with the county judge and one person elected by the fiscal court of the county, constitute the local board of health.[15] In South Dakota, the county board of health is composed of the state's attorney of the county and two licensed physicians, residents of the county appointed by the state board of health.[16]

It may be seen that the size, organization, and method of selection of county boards of health show great variation. The situation is complicated further in some states by the use of township boards of health. In Pennsylvania, a township board of health is found in townships of the first class, composed of five persons appointed by the township commissioners.[17] In Illinois, the supervisor, assessor, and town clerk constitute a township board of health. The county commissioners in counties which do not have townships constitute a county board of health.[18] Other states also provide for township boards of health. Michigan formerly made use of such township authorities but provision was made in 1917 for district health officers and in 1927 for county health officers.

The powers and duties of county boards of health show great variation. They are usually empowered to make and enforce regulations to safeguard the health of the people, to prevent nuisances and unsanitary conditions, and to prevent the introduction and spread of contagious and infectious diseases. Power is often conferred upon them in general terms, as "supervision over all matters relating to health and sanitation in their respective counties.'' In some cases emphasis is placed upon the duties of the county health board as an agency of the state. It is the duty of the county board of health in Oregon ''to enforce the rules and regulations of the state board of health and such other rules and regulations of the county or city board of health as are approved by the state board of health, and to perform such other duties as may from time to time be required of them by the state health officer pertaining to the health of the people.''[19]

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[13] *Ga. Code,* 1926, sec. 1676 (1).

[14] *Va. Code of 1924,* sec. 1492.

[15] *Carroll's Ky. Stat.,* 1922, sec. 2055.

[16] *S. D. Rev. Code,* 1919, vol. 2, sec. 7675.

[17] *Laws of Pa.,* 1927, p. 155.

[18] *Cahill's Ill. Rev. Stat.,* 1927, ch. 34, sec. 141.

The county board of health is usually empowered to appoint an executive or administrative officer to aid in administering the health affairs of the county. This officer is given various titles, as secretary of the county board of health, county physician, or county health officer. In most cases this officer does not give his full time to the duties of his office but often merely acts as county physician for the poor.

The administration of county health work by local boards of health, composed of practicing physicians and laymen or ex officio county officers without full time health officers or agents, was declared by the New York Bureau of Municipal Research in its report on county government in Virginia to be ''wholly incompetent to meet modern standards of health practice.'' The report asserted that ''full time county or district health organization is essential to rural health betterment. Given such organization, under skilled direction, there would be no need for the continuance of local boards of health.''[20] It is suggested that the old-time local board of health should be gradually supplanted by a full time health officer.

There is a tendency to secure full time county health departments to serve the rural sections of the country. Since the first such department was established in 1911 (Yakima county, Washington), the movement has continued until at the end of 1928 there were 462 departments of this nature.[21] The states having the largest number of counties with full time health departments were Alabama, Georgia, North Carolina and Ohio. The movement has made the greatest progress in the Southern states. The United States Public Health Service has been coöperating in securing such full time county health departments, but it has been limited by a lack of funds, since an appropriation of only $50,000 a year has been made for federal participation in the development and maintenance of rural health work.[22]

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[19] *Ore. Laws,* 1920, vol. 2, sec. 8369.

[20] *County Government in Virginia,* p. 59.

[21] *U. S. Public Health Reports,* vol. 44, no. 20, May, 1929.

The United States Public Health Service has stressed the need for a constructive plan of work for a local health organization. The following have been suggested as among the general measures to be considered for adoption in the plan of health work in the average community[23]: 1. Quarantine and bedside instructions to prevent the spread of dangerous communicable infections. 2. Instructions in prenatal care and in the hygiene of infants of preschool age. 3. Hygiene of schools and other public buildings, and physical examination and physical training of school children. 4. Control of soil pollution. 5. Control of insects likely to convey infection. 6. Safeguarding water and food supplies and giving instruction in the principles of dietetics. 7. Life-extension work. 8. Organization of local clubs for instruction and training in physical development and general hygiene. 9. Antituberculosis work directed especially toward the discovery and encouragement of proper self-treatment of cases of incipient and early stage tuberculosis. 10. Educational work, through lectures, printed articles, moving pictures, and other available agencies, concentrated from time to time on different specific subjects.

A county health program such as this would be a distinct advance over the usual plan where the county health officer acts primarily and in many cases only as the county physician to the poor. The minimum cost of a county health department for all except the most sparsely populated and poorest counties should be at least $10,000 a year.[24] In the more populous counties a larger budget would be needed, an expenditure of fifty cents per capita being considered adequate and proper. For a program such as that outlined above a minimum personnel should include: (1) a full time medical health officer, (2) one nurse or sanitary inspector, (3) an office clerk. Where it is possible to secure both a nurse and a sanitary inspector a much more efficient organization will be provided.

The program and plan of organization for a county health program outlined above may be looked upon as an ideal which counties may hope to attain. While it will doubtless take some time to secure county health departments which will approach this ideal, certain recent developments are encouraging as a tendency towards better health conditions in the counties of the country. The provision for county nurses and the establishment of county hospitals are signs of a tendency to better health conditions in the rural areas.

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[22] *Public Health Bulletin,* No. 139, p. 32.

[23] L. L. Lumsden, ''Rural Hygiene,'' *United States Public Health Reports,* vol. 34, no. 45, Nov. 7, 1919, pp. 2528-2529.

[24] *Public Health Reports,* May 15, 1925.

COUNTY HOSPITALS

An important development in measures for health improvement in the United States has been the increase in the number of county hospitals and the scope of their activities. Some provision for medical attention was early made in county almshouses; and a number of almshouse hospitals date from the second quarter of the nineteenth century,[25] and some of these have been made available to others than regular inmates. In other cases county isolation hospitals for the treatment of epidemic diseases were established; and also asylums or hospitals for the insane.

In 1872, New York authorized county and other local authorities to provide hospital treatment for indigent persons in existing hospitals; and in the same year California authorized boards of supervisors in each county to establish and maintain a county hospital.[26] A more general movement has developed since 1900. County hospitals were authorized in Indiana in 1903 and in Iowa in 1909[27]; and since then in at least eighteen other states.[28]

In some states the power to establish county hospitals is vested in the county boards; in others a local referendum is required.

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[25] Berks County (Pennsylvania) Almshouse Hospital, 1824; Onondaga County (N. Y.) Hospital, 1827; Chautauqua County (N. Y.) Almshouse and Hospital, 1830; Knox County (Ill.) Home and Hospital, 1832; Madison County (Ind.) Infirmary, 1834; Eloise Infirmary (Wayne County, Mich.), 1834; Cook County (Ill.) Hospital, 1847; Sacramento County (Calif.) Hospital, 1848. "Hospital Service in the United States," *Journal of the American Medical Association,* March 30, 1929.

[26] *New York Laws,* 1872, ch. 733; 1901, ch. 103; *Kerr's Consol. Laws of N. Y.,* Ann., ch. 42, sec. 30; *Kerr's Codes of Calif., Pol. Code,* sec. 4223.

[27] *Burns' Ann. Ind. Stat.,* 1926, vol. 2, sec. 4363; Walter A. Dyer, "Putting Character into Counties," 30 *World's Work* 604-609 (1913); Walter C. Nason, "Rural Hospitals," *U. S. Department of Agriculture, Farmer's Bulletin,* No. 1485.

[28] Massachusetts, New Jersey, Pennsylvania, North Carolina, Kentucky, Illinois, Ohio, Michigan, Wisconsin, Minnesota, Missouri, Kansas, South Dakota, Colorado, Wyoming, Washington, Oregon, and Texas.

Thus, in Missouri the question of the establishment of a hospital is to be submitted to the voters of the county upon petition of not less than one hundred qualified voters. In Kansas counties having less than 40,000 inhabitants, the question is submitted to the voters upon the petition of 25 per cent of the resident freeholders of the county, but 10 per cent of the signers must reside outside the city or village in which it is proposed to locate the building. In Ohio, the issue of bonds for a county hospital must be submitted to popular vote.[29]

The power given to counties to establish hospitals in several states is limited as to the class of persons. Thus the county board in some states is given the power to establish hospitals for the indigent poor, as in Washington and Oregon.[30] Boards of county commissioners in South Dakota counties having over 15,000 population may establish and maintain hospitals for the care and treatment of county charges and such others as apply. Counties in Colorado having over 10,000 population may establish and maintain hospitals for the care and treatment of the indigent persons residing in the county, and also for the care and treatment, for pay, of other residents of the county.[31]

In some states counties are authorized to establish hospitals for certain kinds of diseases. In Pennsylvania, counties have been empowered to construct and maintain hospitals for the care and treatment of persons suffering from contagious diseases.[32] Counties in Wisconsin may establish and maintain an outpatient department or a public health dispensary for tuberculosis and other communicable diseases. This may also be used in connection with the correction of physical defects of school children and child welfare work.[33] Michigan and Massachusetts counties have been authorized to establish both general and tuberculosis hospitals.[34] Certain counties in North Carolina and all counties in New York,

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[29] *Rev. Stat. of Mo.*, 1919, vol. 3, secs. 12, 217-231; *Rev. Stat. Kas.*, 1923, 19-1801. Also see *Laws of Kas.*, 1927, ch. 163.

[30] *Comp. Stat. Wash.*, Supp. 1927, secs. 6090-1; *Ore. Laws*, 1920, vol. 2, sec. 3353.

[31] *S. D. Rev. Code*, 1919, vol. 2, sec. 7694; *Sess. Laws of Colo.*, 1925, p. 410.

[32] *Pa. Stat. Complete to 1920*, sec. 7394.

[33] *Wis. Stat.*, 1925, vol. 1, sec. 50.08.

[34] *Comp. Laws of Mich.*, 1915, vol. 3, sec. 10858. As amended see *Public Acts of Mich.*, 1923, p. 18; *Acts and Resolves of Mass.*, 1923, ch. 73; *Gen. Laws of Mass.*, 1921, vol. 1, ch. 3, sec. 81. This applies to Michigan counties only in case they have a population of over 30,000.

Ohio, Illinois and Minnesota have been authorized to establish hospitals or sanatoriums for the treatment of tuberculosis.[35] Counties in Wyoming and some other states have been authorized to establish county memorial hospitals.[36] There seems to be no difference, however, in the function of such memorial hospitals and general hospitals in other states.

By 1928, there were 489 county hospitals in the United States, with 63,231 beds, an increase of 40 per cent over 1923. The largest numbers are in California 57, Wisconsin 55, and New York 50. Indiana, Illinois, Michigan, Ohio, Pennsylvania, and New Jersey have from 20 to 32 county hospitals each.[37]

In addition to county hospitals, there are many other hospitals maintained by cities, churches, and other organizations, as well as national and state hospitals for special classes. In 57.4 per cent of the counties in the United States there are one or more hospitals for general treatment, as compared with 44 per cent in 1920. In the North Atlantic group of states there are hospitals in more than 90 per cent of the counties; in the North Central and Western states in about 65 per cent; and in the Southern states in about 45 per cent.[38]

In most cases county hospitals are for general treatment of indigent sick people. There are also many county hospitals for special classes, such as tuberculosis and mental diseases, and in

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[35] *Public Laws of N. C.*, 1925, p. 359; *Page's Ohio Gen. Code*, secs. 3139-47; *Kerr's Consol. Laws of N. Y.*, Ann., ch. 11, sec. 65; *Cahill's Ill. Rev. Stat.*, 1927, ch. 34, sec. 24; *Gen. Stat. of Minn.*, 1913, sec. 709.

[36] *Sess. Laws Wyo.*, 1925, ch. 19.

[37] The number of government and non-government owned hospitals in the United States in 1928 is shown below:

	Hospitals	*Beds*
Federal	294	61,765
State	595	369,739
County	489	63,231
City	372	65,166
City-County	65	7,533
Total Government	1,813	567,434
Non-Government	5.039	325,500
Grand Total	6,852	892,934

From "Hospital Service in the United States," *Journal of the American Medical Association*, March 30, 1929.

[38] "Hospital Service in the United States," *Journal of the American Medical Association*, March 30, 1929.

some states, as New Jersey and Wisconsin, there are county hospitals for the insane.

The central government in some states has some degree of control over counties in the establishment of county hospitals. In Pennsylvania, the plans for county hospitals are prepared by the county commissioners, or at their instance, but they must be submitted to the state commissioner of health and must receive his approval before the construction of any building is started. The state commissioner of health in Michigan is also given a large measure of control over the construction and maintenance of county hospitals for the treatment of tuberculosis. The approval of the department of public welfare is necessary in Massachusetts before a county may establish a county tuberculosis preventorium for children.[39]

Various methods are used to govern and control county hospitals after they have been established. In some states they are under the control and supervision of the board of supervisors; in some, as in Iowa, a board of trustees may be elected by the voters of the county; and in others, as Kansas, there is a board of trustees appointed by the county board.

In some states counties have been authorized to give financial aid to private hospitals in the county. The county authorities in New York and Maryland are authorized to provide hospital services for the use of their inhabitants. In Maryland, they may themselves build a hospital for that purpose or enter into a contract with a private hospital for the reception of the sick inhabitants of the county. Mississippi counties having over 40,000 population may tax to aid in the support of a hospital in the county for the treatment of persons suffering from tuberculosis. A county board in Illinois may contribute such sum towards building and supporting any non-sectarian public hospital for the sick or infirm located within its limits as it sees fit.[40]

The power of a county to establish a tuberculosis hospital has been attacked in New York as not being a proper county purpose, because the plan included taking pay patients, either residents of the county having the means to pay for private accommodations, or those from outside the county who otherwise would not be entitled to its benefits. The Appellate Division of the Supreme Court of New York held that the incidental revenue from board, or for special care, did not deprive such an institution of its charitable character.[41] It has also been held that a county is not liable in tort for the acts of its agents and employees in operating a county hospital; "a quasi-corporation, like a county, is not liable for the acts of officers or employees which it appoints in the exercise of a portion of the sovereign power of the state, by the requirements of a public law, and simply for the public benefit, and for a purpose from which the county as a corporation derives no benefit."[42]

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[39] *Pa. Stat. Complete to 1920,* sec. 7394; *Public Acts of Mich.,* 1925, p. 245; *Acts and Resolves of Mass.,* 1927, ch. 73.

[40] *Ann. Code of Md.* (Bagby), vol. 1, art. 43, sec. 62; *Laws of Miss.,* 1926, ch. 305; *Smith Hurd Ill. Rev. Stat.,* 1925, ch. 23, sec. 164.

COUNTY NURSES

A more recent development in county health administration is the county nurse movement. Boards of supervisors in New York, except of counties constituting a general health district created under the public health law, may appoint and provide for the expenses of such number of public nurses as they may deem proper. Such nurses are to work under the direction of a committee to be appointed by the board of supervisors. This committee must include at least two physicians. The Michigan legislature at its 1925 session authorized and empowered each of the counties of that state to employ public health nurses and to appropriate such sums of money therefor as may be necessary. The law provides that the work of the public health nurse may be directed by a local committee of not more than five members, known as the county health nurse committee, and composed of the chairman of the county board of supervisors and four other persons appointed by the board.[43]

The Wisconsin law illustrates the possibilities in the use of county health nurses. The law in that state provides that the county boards shall employ one or more nurses whose duties shall be as follows: "To act as health supervisor for schools not already having school inspection by a physician or nurse; to assist the superintendent of the poor; to instruct tuberculosis patients and others in preventing the spread of tuberculosis; to assist in reporting cases of tuberculosis and other communicable diseases; to assist in investigating cases of delinquency, neglect and dependency of juveniles, including state aid to dependent children, in counties not employing a probation officer; to assist in investigating cases of non-school attendance in districts not employing a school attendance officer; to assist in investigating cases of infringement on child labor laws; to investigate cases of crippled children; to act as health instructor throughout the county, and to perform such other duties as may be assigned.'' The work of the county nurse is directed by a county health committee composed of the chairman of the county board, the county superintendent of schools, a woman appointed by the county board, the judge of the juvenile court, and the deputy state health officer for that county.[44]

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[41] *Smith v. Smith,* 160 N. Y. S. 574 (1916).

[42] *Sherbourne v. Yuba County,* 21 Calif. 113 (1862).

[43] *Consol. Laws of N. Y.* (Birdseye, Cumming and Gilbert, 2nd ed.), vol. 15, supp. 1925, pp. 43-44; *Public Acts of Mich.,* 1925, p. 15.

County boards in Minnesota and other states have also been given the power to employ public health nurses. County commissioners courts in Texas are authorized to employ one or more nurses for the purpose of assisting in the promotion of public health and visiting and inspecting the pupils of the public schools,[45]

THE UNIT OF HEALTH ADMINISTRATION

Another question which arises in connection with local health administration is as to the proper unit or area for this purpose. Should it be the township, the county, a special health or sanitary district, or a larger area formed by the union of several counties? There seems to be little argument in favor of the township as a unit of health administration. It is clearly too small to secure economy and efficiency in the administration of health laws. The chief question seems to be whether the county or some larger area shall be used for this purpose.

The Special Joint Committee on Taxation and Retrenchment in New York, in its report of 1923, states that ''it is conceded by health authorities generally that the county is the logical unit of state health administration.'' The report favored mandatory legislation to bring about the organization of health administration on a county basis; an optional law permitting such consolidation is unsatisfactory since ''local political interests are almost invariably against such consolidations.'' [46] It was pointed out that this would increase the cost of local health service, since ''health expenditures almost invariably increase as the size of the administrative unit increases.'' But the committee went on to point out that real economy in public health administration is not measured by expenditures, but ''by the development of a health service in the local communities which will effectively carry out the State's program of disease prevention.'' In his message to the state legislature in January, 1926, Governor Smith of New York also stated that ''the unit for local public health work should be the county.''

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[44] *Wis. Stat.*, 1925, vol. 1, sec. 141.06; *Laws of Wis.*, 1927, ch. 155.

[45] *Laws of Minn.*, 1919, p. 35; *Gen. and Special Laws of Texas*, 1927, p. 243.

[46] *Report of Special Joint Committee on Taxation and Retrenchment*, 1923, p. 90.

There are some who believe, however, that the county is too small a unit for successful health administration and that better results will be secured by the use of larger district units. The New York Bureau of Municipal Research in its report on county government in Virginia stated that: ''The organization of rural health work on a strictly county basis is uneconomic in many instances. For a slightly increased expenditure, a much larger population could be as well or better served, and at a lower per capita cost.''[47] The use of these larger units of administration was recommended for health work; ''the consolidation of certain counties, or counties and cities, into health districts would permit the state to distribute its allotment for county aid more widely and more equitably, and help to reduce the amount of state supervision needed to maintain higher and more uniform standards of local practice.''

The answer as to the proper unit for purposes of local health administration seems to depend upon the size of counties in the particular state. If the counties are large, as in Massachusetts, the county may be a satisfactory unit; but if the counties are small they should probably be united into larger districts. The tendency today is clearly towards a larger administrative unit for health purposes. This is seen in the consolidation of local health authorities into one county health department; it is seen also in the consolidation of two or more counties into one health district. Whether the final solution of the problem will be the adoption of the county or of some larger area for administrative purposes, remains to be seen. Some consideration will now be given to recent legislation looking to the use of a larger unit for health administration.

A New York law of 1921 seems to recognize the difficulty of securing adequate local health administration where, as in that state, the territory of the county is divided into health districts. This law gives the board of supervisors authority to consolidate all or any part of the county in a general health district, with a full time officer. The state aid law of 1924 was a further incentive to place local health administration on a county basis. Tennessee counties were authorized in 1921 to establish a county health department, with a health officer at its head who is required to give his full time to the duties of his office, and with such sanitary inspectors, visiting nurses, and clerical assistants as may be necessary. Counties in Mississippi are now authorized to create a county department of health and to appoint a director who is required to give his entire time to the work. When a county creates such a health department, all other local or municipal or county health agencies are automatically abolished and the county department has full control over all health matters in the county. In case a county is unable to have a health department of its own on account of its size or lack of finance, two or more counties may unite and constitute a sanitary district.[48]

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[47] *County Government in Virginia,* 1927, p. 59.

This tendency to use a larger area for purposes of health administration is also seen in a Michigan law of 1927 which provides that two or more counties in that state may, by a majority vote of the board of supervisors of each county and the approval of the state health commissioner, unite to form a district maintaining a district health department. The governing board of such a district is composed of three members selected by each county board in the district from its own membership. This board selects the district health officer and, with the state health commission, exercises the same control over him as the board of supervisors has over the county health officer. Any two or more Michigan counties may also coöperate to establish and operate a joint sanatorium for the treatment of tuberculosis. In Texas, when it is found to be more practicable, and when approved by the state board of health, two or more adjacent counties, each having a population of less than 15,000 persons, may join for the purpose of erecting one or more hospitals for their joint use. Ohio and Minnesota counties have a similar power jointly to acquire and maintain a tuberculosis sanatorium.[49]

The use of special districts for purposes of public health administration is becoming more common. While special districts are considered in another chapter, brief reference to their use for purposes of health administration may be made here. The Michigan legislature, at its 1917 session, empowered any two or more contiguous townships or villages in any county, or portion of an adjoining county, to unite to form a health district. Such a health district was empowered to employ "a competent physician trained in public health work as district health officer."[50] This act was repealed in 1927 and provision was made for county health departments; two or more counties may now unite and form health districts.

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[48] *Public Acts of Tenn.*, 1921, ch. 89; *Hemingway's Miss. Code,* 1927, vol. 2, sec. 5569. On this question see Ralph G. Beachley, ''County Health Department Is Economical Unit,'' 8 *The Nation's Business* 385-87 (1926).

[49] *Public Acts of Mich.*, 1927, p. 565; *Vernon's Texas Stat.*, vol. 13, art. 4494; *Mason's Minn. Stat.*, 1927, vol. 1, sec. 688.

Ohio also makes use of special districts for purposes of health administration. Each city in the state constitutes a health district; the townships and villages in each county are combined into a health district and are known as a general health district. Provision is made, however, for the union of two general health districts, or a union of a general health district and a city health district located within such district. The state law provides for the method of apportioning the expense when a district is composed of two or more townships in two or more counties.[51]

New York and Illinois also provide for health districts; Ohio for county sewer districts; Oregon for sanitary water areas; Florida, Illinois, and California for mosquito abatement districts; and California for county sanitation districts. These special districts are in many cases performing functions which might otherwise be performed by county health authorities. The effect of such special districts will be considered later.

CITY COUNTY COÖPERATION

The question of the proper relationship between county and city must also be considered in connection with county health administration. Should separate health departments be organized for the cities or should the county health department have jurisdiction in the cities as well as in the rural areas? The United States Public Health Service has stated that in a county where the largest city does not exceed 50,000 population it is usually desirable, in the interest of efficiency and economy, to form a combined county and city health department under the administration of one officer. Even where this is not possible, it is suggested that the county health officer should be given general advisory authority over all health work in the county.[52] While it is often provided, as in Nebraska, that the jurisdiction of the county board of health is limited to the territory outside of incorporated cities and towns, there is a noticeable tendency in several states to secure unified health administration for the county, or at least to secure a greater degree of coöperation on the part of all health authorities within the county.

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[50] *Comp. Laws of Mich.*, Ann. Supp., 1922, sec. 5090.

[51] *Page's Ohio Gen. Code*, 1926, vol. 1, secs. 1261-76. Also see *State v. Zangerle*, 134 N.E. (Ohio) 686 (1921).

An act passed by the Pennsylvania legislature at its 1927 session aims to secure greater coöperation on the part of the local areas in the administration of health laws. It provides that any city, borough, or township may coöperate with the county in which it is situated, and with any political subdivisions within such county in the administration and enforcement of the health laws of the state.[53] While the county health department in Michigan has no jurisdiction in cities having an organized health department with a full-time health officer, the law provides that such cities may elect to join with the county organization.[54] In cases where counties in Tennessee have established a county health department with a full-time health officer in charge, municipalities are authorized to coöperate in the maintenance of such department, and they may elect to enter into an agreement by which such county department also serves as the department of health for the municipalities. Municipal and county authorities in Texas are authorized to coöperate with each other in making such improvements as may be deemed necessary to improve the public health and to promote efficient sanitary regulations. Commissioners' courts in that state may also coöperate with and join the proper authorities of any city having a population of 10,000 persons or more in the establishment and maintenance of a hospital. In such case the management of the hospital is under the joint control of the county and the city.[55]

PRIVATE AGENCIES

Certain private agencies have aided in establishing county health departments and improving the standards of local health administration. The work done by the International Health Board of the Rockefeller Foundation illustrates this type of coöperation. When this International Health Board gives assistance for county health work it usually requires the county and state to pay one-half or three-fourths of the budget.

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[52] Thomas Parran, Jr., "Coöperative County Health Work," *Public Health Reports*, vol. 40, No. 20, May 15, 1925.

[53] *Laws of Pa.*, 1927, p. 61; *ibid.*, p. 155.

[54] *Public Acts of Mich.*, 1927, p. 565.

[55] *Shannon's Code of Tenn.*, Supp. 1926, sec. 3111a3; *Vernon's Texas Stat.*, vol. 13, Art. 4434; *ibid.*, Art. 4492.

STATE SUPERVISION

The question of the relation between the county and the state is one of the important considerations in county health administration. Since the county, in performing this function, is acting primarily as an agent of the state[56] and not as a unit of local government it seems appropriate that the state should exercise some control over counties in such matters. The question is as to the form and degree that this supervision should take.

The earliest form of state action in local health matters was legislative in nature; there has been, however, a gradual development of administrative supervision and control. The chief methods in which the state and local authorities come into relation with each other, and the means of state control, have been summarized as follows[57]: 1. Diffusion of information and advice by state authorities. 2. Reports by local officers. 3. State aid to local bodies. 4. Division of the state into districts and appointment by state authority of district inspectors of local health matters. 5. Appointment of local health officers. 6. Removal of local health officers. 7. Approval by state authorities necessary to validate local action or reversal of local action by state authorities. 8. Assumption of local health administration by state authorities upon failure of local authorities to act. 9. Issuance by state authorities of rules and regulations controlling local authorities. 10. Decision by state authorities of questions of disputed jurisdiction between local authorities. 11. Requirement of state-wide conferences by local health authorities. In no one state are all of these methods of supervision found; most states have some of them, and some states have none.

The division of the state into districts and the state appointment of district inspectors of local health matters is being used in several states. The extent of the authority of such inspectors varies in the states where this method is used. In Massachusetts the commissioner of public health is empowered, with the approval of the public health council of the department of public welfare, to divide the state into not more than eight health districts. He appoints, with the approval of the council, district health officers, who act as the representatives of the commissioner, and under his direction secure the enforcement of the laws and regulations relating to public health.[58] The commissioner of public health in Pennsylvania is empowered to apportion the state into ten districts, and to appoint for each district a health officer, who, under the direction of the commissioner of health has control of the sanitary affairs of the district and the registration of vital statistics.[59] In both Massachusetts and Pennsylvania the law requires certain enumerated qualifications for district health officers; and in Massachusetts they must give their entire time to the performance of their duties.

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[56] *Henderson County Board of Health v. Ward*, 54 S.W. (Ky.) 725 (1900).

[57] J. M. Mathews, *op. cit.*, p. 684. Also see Schuyler C. Wallace, *State Administrative Supervision over Cities in the United States* (1928), ch. 4.

In Maryland the state board of health divides the state (outside of Baltimore), into ten sanitary districts and appoints a deputy state health officer for each. Among other duties these officers are required to keep informed as to the work of each local health officer within their districts, and aid to such officers in the performance of their duties. The state board of health in New Jersey is empowered to appoint inspectors and to "assign them to such duties as the interests of the public health in any part of the state may require."[60]

Wisconsin and New York also use the plan of district supervisors or inspectors. The duties and powers of the state agents in these two states indicate the possibilities of this method of state supervision of county health administration. It is the duty, among others, of the deputy state health officer in Wisconsin to[61]: 1. Keep himself informed as to the work of each local health officer. 2. Aid each health officer in the performance of his duties, and particularly on the appearance of communicable diseases, and to respond promptly when called upon for advice or assistance by any board of health or health officer. 3. Assist each local health officer in an annual sanitary survey and in maintaining a continuous sanitary supervision. 4. Adjust questions of jurisdiction arising between local health officers. In New York, sanitary supervisors who are appointed by the state commissioner of health, in addition to the duties of district supervisors of health in Wisconsin, must call together the local health officers within their district from time to time for conference; and they also act as the representative of the state commissioner in securing the enforcement of the public health law and the sanitary code.[62]

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[58] *Gen. Laws of Mass.*, 1921, vol. 1, ch. 17, sec. 7.

[59] *Pa. Stat. Complete to 1920*, sec. 8976.

[60] *Ann. Code of Md.* (Bagby), 1924, vol. 1, ch. 43, sec. 10; *Comp. Stat. of N. J.*, 1709-1910, vol. 2, p. 2658. For the method of carrying out county sanitary regulations in Georgia see *Ga. Code*, 1926, sec. 1676 (3).

[61] *Wis. Stat.*, 1925, vol. 1, sec. 140.07.

The duties imposed upon such officers in these states indicate that the purpose of such state district supervisors or inspectors is to aid and assist local health officers as well as to require them to maintain certain minimum standards in their work. In the use of such inspectors seems to lie one of the possible methods of securing a proper relationship between the state and the local areas in the matter of public health administration.

SELECTION OF LOCAL OFFICERS

Some states go beyond the appointment of district supervisors discussed above and provide for state appointment of county health officials. State appointment of the county board of health or some of its members, as in Kentucky, Virginia, and South Dakota, has been discussed above. Cases of appointment of the chief executive health officer of the county are more numerous. In Vermont the state board of health appoints a health officer for each town, who must be a resident of the town for which he acts. The state board of health in Wyoming designates a practicing physician in each county as county health officer. In Mississippi, a competent physician is appointed county health officer by the state board of health, to serve for a term of two years. In Connecticut, county health officers are appointed by the judges of the superior court.[63]

County quarantine officers were provided for by the Alabama legislature at its 1927 session for all counties having no health officer. They are appointed by the state committee of public health on the recommendation of the county board of health. These officers, who must be licensed physicians, perform, under the supervision and control of the state health officer and the county board of health, all the duties in connection with the isolation and quarantine of cases of infectious diseases that are required of county health officers in other counties.[64]

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[62] *Consol. Laws of N. Y.* (Birdseye, Cumming, and Gilbert, 2nd ed.), vol. 6, pp. 6525-26.

[63] *Gen. Laws of Vt.*, 1917, sec. 6217; *Wyo. Comp. Stat.*, 1920, sec. 3593; *Hemingway's Miss. Code*, 1927, vol. 2, sec. 5518; *Gen. Stat. of Conn., Rev. of 1918*, sec. 2390.

The power to appoint county health officers is given to the state authorities in several other states, in case the local health authorities fail to make any appointment. Thus in Maine, Missouri, Texas, Nevada, Montana, and Washington, the state board of health appoints local health officers when the local authorities fail to make such appointment.[65] In New York this power is conferred upon the state commissioner of health, and in North Carolina upon the secretary of the state board of health.

The New Jersey law is of interest in connection with the question of the selection of local health officers; while appointment is left in the hands of the local authorities the state determines qualifications and eligibility. In order that local boards of health may be able to secure the services of capable health officers, the state board of health is required to give examinations at such times and places as it may appoint and under such regulations as it may adopt. No local board of health may appoint any person as health officer who is not the holder of a license granted by the state board.[66]

Provision for state approval of local health officers is found in a few states. An act of the Pennsylvania legislature in 1925, which authorizes the board of county commissioners to appropriate money for the protection of the health of the people of the county, provides that in case any health officers are appointed under the act they are to be approved by the state department of health.[67] An act passed in New Mexico in 1919 authorized boards of county commissioners to appoint a county health officer, subject to confirmation of the state department of health.[68] Commissioners appointed by the county board in Minnesota to supervise and control county tuberculosis sanatoriums must be approved by the state board of health.[69]

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[64] *Gen. Acts of Ala.*, regular session 1927 and special session 1926-27, p. 102.

[65] *Rev. Stat. of Me.*, 1916, ch. 19, sec. 40; *Rev. Laws of Nev.*, 1919, vol. 3, sec. 2957; *Comp. Stat. of Wash.*, 1922, vol. 2, sec. 6091; *Rev. Codes of Mont.*, 1921, vol. 1, sec. 2474; *Vernon's Texas Stat.*, vol. 13, Art. 4426; *Rev. Stat. Mo.*, 1919, vol. 2, sec. 5782.

[66] *Cum. Supp. to N. J. Stat.*, 1911-24, vol. 1, pp. 1477-78.

[67] *Laws of Pa.*, 1925, p. 34.

[68] *Laws of N. M.*, 1919, ch. 85. See *State Department of Health v. San Miguel County*, 195 Pac. (N. M.) 805 (1921), for a case of state action under this statute.

STATE REMOVAL OF LOCAL OFFICERS

State removal of county health officers is provided in several states; the power is usually vested in the state board of health. The power of removal is vested in the commissioner of health in Connecticut, who may "for cause, and with the consent of the council remove any local health official." County health officers in Kansas may be removed by the state board of health for failure or neglect to perform any duties prescribed by the state health laws. Removal may be made by the state board of health in Mississippi at any time "for such conduct as it may deem improper, or for neglect of duty, or for incompetency, or for any offense which in their judgment, is detrimental to the public welfare." In Oregon the state board may remove at any time any county, city or town health officer "for intemperance, failure to collect vital statistics, obey rules and regulations, keep records, make reports, or answer letters of inquiry, or obey orders of the state health officer concerning the health of the people." [70]

The laws of some states provide that in certain contingencies the state board of health may supersede the local boards. In some cases this is done where local boards are not appointed; in other cases where the local board fails to take proper measures to suppress contagious diseases or fails to establish quarantine. The laws often provide that when state health authorities supersede the local agents the expense shall become a charge upon the local government. Thus it is made the duty of the department of health of the state of New Jersey to call the attention of local authorities to any failure on their part to enforce the laws of the state or the state sanitary code and to afford them an opportunity to explain their failure.[71] The determination of the state board as to what is reasonable notice is made conclusive. If, after a hearing, it finds that no good reason exists for the failure of the local health authorities to enforce the law or the sanitary code, it shall issue an order directing them to do so. If the local authorities fail to comply within the specified time, the department of health is to take such action as may be necessary. Any contracts which it makes for such purpose are binding upon the local authorities. All money expended by the state department of health to carry out such an order is made a charge against the local area whose authorities fail to comply with the order. The Wisconsin statutes also provide that in case the local authorities fail to enforce the communicable disease statutes and rules, the state board of health shall take charge, and expense thus incurred shall be paid by the municipality.[72]

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[69] *Mason's Minn. Stat.*, 1927, vol. 1, sec. 686.

[70] *Conn. Public Acts*, special session 1918 and regular session 1919, p. 2866. Cf. *Vernon's Texas Stat.*, vol. 13, Art. 4429; *Rev. Stat. of Kas.*, 1923, sec. 65-203; *Hemingway's Miss. Code*, 1927, vol. 2, sec. 5571; *Ore. Laws*, 1920, vol. 2, sec. 8369; *Gen. Laws of Ore.*, 1927, p. 409.

[71] *Cum. Supp. to N. J. Stat.*, 1911-24, vol. 1, p. 1466.

STATE REGULATION

Another means by which state control over local health authorities has been secured is that of requiring the approval of the regulations of the local boards and officers by the state board of health. In Connecticut no regulation adopted by a town health officer is valid until it has been approved by the state department. State approval of local regulations is also required in other states.[73]

The state health authorities may, in some states, modify or set aside orders and regulations of local boards of health. In New York the commissioner of public health may "reverse or modify an order, regulation, by-law or ordinance of a local board of health concerning a matter which in his judgment affects the public health beyond the territory over which such local health board has jurisdiction." This power is also conferred upon the commissioner of health in Pennsylvania. The Michigan legislature, at its 1927 session, authorized boards of supervisors to provide for county health departments, the plan of organization to be approved by the state health commissioner. The administration of the health laws is to be carried out by the county health department "under the advice and direction of the state department of health." [74]

The holding of state conferences of local health officers by the state authorities is another method used to secure uniformity of practice and to improve the standards of local health administration. Such conferences are now provided for in several states. In

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[72] *Wis. Stat.*, 1927, vol. 1, sec. 143.03.

[73] *Gen. Stat. of Conn., Rev. of 1918*, sec. 2402; *Ann. Code of Md.* (Bagby), 1924, vol. 1, art. 43, sec. 29.

[74] *Consol. Laws of N. Y.*, Supp. 1924, vol. 4, p. 464; *Pa. Stat. Complete to 1920*, sec. 8977; *ibid.*, sec. 15754; *Public Acts of Mich.*, 1927, p. 565.

Indiana it is the duty of all local boards of health to send a representative to a meeting of the state board of health, when requested, for consultation or conference concerning the restriction and prevention of contagious and infectious diseases, or for the consideration of other important sanitary matters. The state board of health in New Jersey is authorized to hold an annual conference with delegates from the various local boards of health "for the consideration of questions relating to the prevention and spread of dangerous communicable diseases and the promotion of the public health." Annual conferences of local health officers are provided for also in Texas, Utah, and other states. County health associations for the purpose of holding county meetings of health officers are provided for in Pennsylvania.[75]

It may safely be said that supervision by central authorities "has generally resulted in increased efficiency of public health administration, and has redounded to the advantage of both the localities and the state as a whole."[76] The establishment of state boards of health with fairly extensive powers of control and supervision has not necessarily meant that local boards decrease in importance. In some cases it has resulted in increased activity and efficiency on the part of the local authorities.

In its report on County Government in Virginia in 1927, the New York Bureau of Municipal Research maintained that the starting point for health service is the local government.[77] It was stated that regardless of how highly organized the central state agencies may be, "they cannot deal adequately with the problem of rural life and environment, except at prohibitive cost." The need of strengthening the central state department so that it may function more effectively in promoting better local organization was recognized; this will be wasted effort, however, according to the report, unless there is also a reorganization of county government which will provide them with the means for meeting health needs at their source.

The tendency seems to be clearly towards centralization of authority. With the increase in population, problems of health administration will increase in complexity. Disease and epidemics do not respect county boundary lines. These are matters in which the whole state, and not merely the county concerned, has an interest. While there has been a tendency since the World War to build up county health administration, as is seen in the movement for county hospitals, county nurses, and full-time county health departments, it seems that this has not resulted in any decline of state supervision.

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[75] *Burns' Ind. Stat.*, 1926, vol. 2, sec. 8177; *Comp. Stat. of N. J.*, 1709-1910, vol. 2, p. 2661; *Vernon's Texas Stat.*, vol. 13, art. 4433; *Comp. Laws of Utah*, 1917, p. 611; *Wis. Stat.*, 1925, vol. 1, sec. 140.08; *Laws of Pa.*, 1925, p. 223.

[76] J. M. Mathews, *op. cit.*, p. 686.

[77] *County Government in Virginia*, p. 54.

STATE AID TO COUNTIES

State aid in matters of health administration is being used in some states, as a means of improving conditions in the counties and other local areas.

Any county in New York, exclusive of a county having within its boundaries a city of 50,000 population or more, may now receive state aid for the construction and maintenance of a county hospital or for the purpose of defraying the expenses of such county "in any public enterprise or activity for the improvement of public health, or any public health work undertaken by such county, within limits prescribed by the state commissioner of health." It is the duty of the state commissioner of health to formulate standards of construction, equipment, service, administration, and work which must be complied with by such counties in order to be entitled to state aid. No state aid is to be given unless the state commissioner of health, "after inspection and examination by him or his representative," certifies that the work is necessary to the public health and conforms to the standards which have been established. The state pays 50 per cent of the amount of expenditure as approved by the state commissioner of health.[78] Up to January, 1927, twenty-four counties had taken advantage of this law, largely for the purpose of providing county public health nurses.

When any general or city health district in Ohio employs any health commissioner, public health nurse, and clerk, the state pays one-half of the amount paid to such employees. In no case is the amount to be paid by the state for a six months period to any local district to exceed $1,000. The state also aids the county financially in working out its health program and organizing its health department in North Carolina. The Arkansas legislature, at its 1925 session, recognizing that "the best results are secured from intensive county health work coördinated with the state health program," provided for the appropriation of a "County Organization of State Aid Fund" which is "available to any county whenever such county shall make an appropriation of an adequate sum of money to be approved by the State Health Officer, necessary to do effective work." [79]

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[78] *Consol. Laws of N. Y.* (Birdseye, Cumming, and Gilbert, 2nd ed., Supp. 1924), vol. 14, pp. 465-66.

The legislature of Louisiana, at its 1926 session, authorized any parish or group of parishes to provide for a full-time health officer. When provision for such full-time health officer is made, the state board of health is authorized to assist such parish or group of parishes in paying the salary of such officer; but in no case is the amount contributed by the state to be less than 20 per cent of such salary.[80] The state board of health is also authorized to assist any parish or group of parishes to establish and maintain regional or district sanatoria for the care and treatment of tuberculosis patients. It may contribute for these sanatoria such sums as in its judgment it deems proper and under such terms and conditions as may be agreed upon.

Towns in Massachusetts which place their patients suffering from tuberculosis in a county, municipal, or incorporated tuberculosis hospital, receive from the state a subsidy of five dollars a week for each patient, provided the patient is unable to pay for his care.[81]

The principle of state aid seems to offer a useful method for determining the relationship between the county and the state in the administration of health laws. It should prove an effective means of bringing about a rapid development of health work on the part of counties and other local areas. Having brought health administration to certain minimum standards, the state may use the method of state grants in aid to maintain these standards.

NATIONAL AID AND COÖPERATION

Some consideration may also be given to the health activities of the national government in so far as they bear upon the problem of county health administration. The rôle of the national government in public health work has shown a steady expansion and development. The expenditures of the Public Health Service have increased from $402,185 in 1880 to $8,737,342 (budget) in 1924. Much of the work of the Public Health Service has no direct relation to the problem of county health administration. That agency does have many functions, however, which are closely related to the problem of rural health: it coöperates with state and local boards; it conducts surveys of public health administration, makes sanitary surveys, and investigates outbreaks of communicable diseases; it issues weekly public health reports which aid in keeping state and local authorities informed on current health problems and the prevalence of disease.[82]

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[79] *Page's Ohio Gen. Code*, 1926, vol. 1, secs. 1261-69; *County Government and County Affairs in North Carolina*, p. 127; *Acts of Ark.*, 1925, Act 360.

[80] *Acts of Legislature of La.*, 1924, p. 369.

[81] *Gen. Laws of Mass.*, 1921, vol. 1, ch. 111, sec. 76. For amendment see *Acts and Resolves of Mass.*, 1926, ch. 284.

The national government's plan of granting subsidies to the states has been extended into the field of health administration. The most important acts in this connection are those dealing with the control of venereal diseases and the promotion of the hygiene of maternity and infancy.[83] It should be pointed out, however, that while the national government has appropriated $75,000,000 to $100,000,000 annually for the construction of rural post roads, requiring each state which accepts its allotment to appropriate a like amount, only $50,000 a year has been appropriated for the development of rural health work. In the cases where it has assisted counties in establishing health departments, the United States Health Service has required that they pay one half of the budget and the state department of health one fourth.

[82] H. H. Moore, *Public Health in the United States* (1923); J. A. Tobey, *The National Government and Public Health* (1926); R. D. Leigh, *Federal Health Administration in the United States* (1927).

[83] 40 *Stat. at L.* 886; 42 *Stat. at L.* 135.

CHAPTER XVI

EDUCATIONAL ADMINISTRATION[1]

THIS chapter will be limited primarily to the subject of rural schools. City schools are, with some exceptions, outside the county school organization. In the strong county unit states of the south, county authorities have been given some control over city schools. Cities in Louisiana, with two exceptions, are included in the parish school organization. These two cities are organized as parishes. In Maryland, all cities and villages, with the exception of Baltimore, are included in the county unit organization. The usual practice is, however, to place city schools outside the jurisdiction and control of county school authorities and to provide a special form of organization and control for them. In Wisconsin the portion of the county which is not subject to the county school authorities may not vote for the county superintendent or county board of education; and in Georgia only those portions of the county subject to the county superintendent may vote for him.[2]

According to the annual reports of the United States Commissioner of Education, about one-half of the children of this country were still enrolled in the village and open country schools in 1919. A study issued by the Bureau of Education in 1919 stated: "These twelve million children are laboring under distinct educational disadvantages. So far as the open-country schools are concerned, full two hundred thousand of these schools may still be classed as one-room schools of pioneer type, which but poorly meet the needs of modern agricultural life. Their teachers are largely immature, inexperienced, poorly trained, and of limited vision of rural needs and problems. The school year is much shorter than it ought to be, enrollment of school population is in many states low, daily attendance is often irregular, and compulsory attendance laws are not always enforced as they should be. The course of study in the small schools is often badly planned and the subjects poorly taught, and financially they are meagerly supported in comparison with what is invested in education elsewhere.''[3]

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[1] William A. Cook, *Federal and State School Administration* (1927); Julius Boraas and George A. Selke, *Rural School Administration and Supervision* (1926), chs. 1-4; Ellwood P. Cubberley, *Rural Life and Education* (1922), chs. 4, 8, 10; Ellwood P. Cubberley, *State and County Educational Reorganization* (1914), ch. 2; A. D. Mueller, *Progressive Trends in Rural Education* (1926). The bulletins of the United States Bureau of Education contain much valuable material on rural educational administration.

[2] On the relation of city schools to county school authorities see: Benjamin J. Burris, *The County School System How Organized and Administered* (1924); Julian E. Butterworth, "Types of County Educational Control in the United States," 15 *Journal of Educational Research* 349 (1927).

ORGANIZATION FOR RURAL SCHOOLS

Four units of organization are found for the administration of rural schools: the district, the township, the consolidated or special district, and the county. The district system, which is the most common unit of administration, originated in Massachusetts. It is the plan of organization where a small rural area is served by a school, and this is taken as the unit of organization and administration. While there is a tendency to change from the district unit to some larger unit, the United States Bureau of Education, in a study published in 1914, pointed out that the district was still the basis for rural elementary school organization in seventeen states, as follows: New York, Illinois, Minnesota, Montana, South Dakota, Nebraska, Kansas, Colorado, Wyoming, Idaho, Nevada, New Mexico, Arizona, Oregon, Missouri, Oklahoma, and Arkansas. The district system was the basis of organization in part in Iowa and Michigan, also in Utah, which had more than one system, with the district system predominating. While North Dakota used both the district and the township plan, the latter was the more common. The district was also the larger factor in the organization and management of six other states. In California, Delaware, Mississippi, South Carolina, Texas, and Washington a semi-county system was in use, with subdistricts in the county in which much control rested. It should be noted that the district system was most common in the West, only three states east of the Mississippi River (Illinois, Michigan and New York) being organized on that basis.[4]

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[3] H. W. Foght, ''Rural Education,'' *Bulletin, 1919, No. 7, United States Bureau of Education.*

[4] A. C. Monahan, ''County Unit Organization for the Administration of Rural Schools,'' *Bulletin, 1914, No. 44, United States Bureau of Education.* In considering the district as a unit of school administration, one writer stated in 1927 that ''While in no state except Delaware does it flourish to the exclusion of some larger unit standing between it and the state, it is in half of

In states using the district system an annual school meeting is usually held to elect a board of trustees or school directors and to determine the general policies of the district. The board of trustees is the governing body of the district and carries out the general policies determined upon at the annual school meeting. While the tax levy for schools is usually set at the annual meeting the funds are spent by the board of trustees. The board selects the teachers, fixes their salaries, purchases supplies, and makes the necessary rules to govern the schools.

The district system of school administration is gradually being replaced by other units; "it has largely outlived its usefulness as a unit of school organization and administration. Unquestionably it is the cause of much of the inefficient and ineffective schools to be found in many sections."[5] In the district system there are many small school districts, some of which are able to support schools but many are not. Many districts have a poor school building and employ a teacher who does not have adequate training, for a term of school which is too short, because they are unable to support a better school.[6] The assessed valuation of property to support schools shows great variation between districts and bears no relation to the school population. Since education is no longer a matter of local interest only, but has become a matter of county and state significance, there is need of a larger unit of administration in order to take care of this problem and to equalize the burden. In a small unit too much depends upon the board of trustees in the determination of the educational policies. Thus many districts have an inadequate and inferior school system because of the desire of a board of trustees to keep down the tax levy for school purposes. The result is a district with a good school system may have next to it a district with an inferior school. Other defects of the district system of school administration are the inefficiency in maintaining schools on so small a basis and the fact that no adequate supervision of the instructional work in the district is practicable. These defects will be considered in connecteion with the question of rural school consolidation.[7]

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the states a unit of extraordinary power." William A. Cook, *Federal and State School Administration* (1927), p. 183.

[5] *Bulletin, 1919, No. 7, United States Bureau of Education.*

[6] *Bulletin, 1914, No. 44, United States Bureau of Education.*

[7] For enumeration of eight defects of the district system see *Bulletin, 1914, No. 44, United States Bureau of Education.*

In the township system (town in New England) all of the schools are placed under the control of township authorities. A school board or school committee is usually selected to have control and supervision over the schools of the town. The size of such boards varies from three to nine. In Indiana the schools are under the supervision of a single township trustee. The first state to adopt the township unit was Indiana in 1852; Massachusetts followed in 1882; New Hampshire in 1885; and Maine and Ohio in 1892. The town or township is the unit of school administration today in all of the New England states, in Pennsylvania, New Jersey, Indiana, and in parts of Michigan, Iowa, and South Dakota.[8]

In a bulletin published by the United States Bureau of Education in 1914 it is stated that the township had proved "very satisfactory in thickly settled regions, especially in New England where no independent city and town districts are formed, and where the township is the unit of local taxation and local government in nearly all civil affairs." The system was found to be not so satisfactory, however, in the states using the congressional township in which township lines are independent of geographical conditions. Schools in such townships had not been located according to the position of the population, or by the roads and physical features of the county. The township has in many cases proved too small a unit for the satisfactory administration of the schools, and in some states the emphasis has been shifted from the township to the county.

The magisterial district is an important unit of school administration in Virginia and West Virginia. These districts average about four per county in Virginia and about six per county in West Virginia; the number of schools in each district varies from twelve to twenty. The governing boards of these districts are elected in West Virginia. In Virginia they are appointed by the school trustee electoral board, which is composed of the attorney for the commonwealth, the division superintendent of schools, and a resident voter appointed by the judge of the circuit court.

CONSOLIDATED SCHOOLS

Another unit of administration for rural schools is the consolidated school district. One method of improving rural school conditions is by the creation of consolidated schools, union schools, or centralized schools. The aim of such consolidation is to secure a better school plant, a better personnel, and a better course of study. When we consider that the small number of children in many districts does not justify the expenditure of an amount sufficient to provide adequate school facilities, the advantages of consolidated rural schools becomes apparent. In the state of New York there were more than three thousand schools in 1920 which had an average attendance of less than ten pupils. Fifteen of these schools had an average attendance of one pupil; 52 of two pupils, 167 of three pupils; 259 of four pupils; 392 of five pupils; 430 of six pupils; and 556 of seven pupils.[9] The mounting costs of education, especially of secondary education, strengthens the tendency towards the consolidation of rural schools.[10]

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[8] See *Bulletin, 1919, No. 7, United States Bureau of Education; Bulletin, 1914, No. 44, United States Bureau of Education.*

Massachusetts was the first state to provide for this form of consolidation, such a law being passed in 1867. Since that time the movement has shown a steady development and some consolidated schools are found in all states today. About one thousand new consolidated schools are being established each year, with the number of one teacher schools showing an annual decrease. At the close of the year 1926, however, there were still more than eight thousand one-teacher schools in Illinois, Iowa, New York, and Pennsylvania. Wisconsin, Minnesota, Missouri, and Kansas, each had over seven thousand one-teacher schools. A small percentage of rural pupils were attending one-teacher schools in Massachusetts, Connecticut, Rhode Island, New Jersey, Louisiana, Mississippi, Arizona, California, and Utah. The states in which the smallest percentage of pupils were attending one-teacher schools were Massachusetts, New Jersey, and Utah. Only 1.9 per cent of the pupils in Utah were in one-room schools in 1925, 2.1 per cent of those in Massachusetts, and 2.4 per cent of those in New Jersey.[11] It was estimated by the United States Bureau of Education that at the close of 1926 there were approximately 16,000 consolidated schools and 158,000 one-teacher schools in the United States. The number of teachers in consolidated schools for 1926 was estimated at 150,000 and the number of pupils at 3,000,000.

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[9] Chamber of Commerce of the United States, *The Rural School and the Chamber of Commerce.*

[10] *Bulletin, 1925, No. 25, United States Bureau of Education.*

[11] James F. Abel, ''Recent Data on Consolidation of Schools and Transportation of Pupils,'' *Bulletin, 1925, No. 22, United States Bureau of Education;* Katherine M. Cook, ''Constructive Tendencies in Rural Education,'' *Bulletin, 1925, No. 25, United States Bureau of Education.*

The period of experimentation in school consolidation has passed, and the movement has been accepted as a commendable one. The details of consolidation may not as yet be finally determined, and these are being considered at the present time in the various states; consolidation having been accepted as a policy, the important thing is to see that it comes in its best form.[12] While the earlier consolidated schools were planned as large graded schools without attempting to suit their courses of study to the needs of the rural areas, the newer schools are organized with a view to meeting the needs of the rural pupils.

In connection with the consolidated school movement there has developed the rural high school. This may take the form of a consolidated high school, a community high school, a township high school, or a rural high school district. While such schools were formerly merely city high schools located in the rural areas, the present tendency is to establish rural high schools of an agricultural type, offering courses suited to the needs of the pupils. The Smith-Hughes Act has acted as a stimulus not only to the organization of rural high schools but also to the selection of a course of study suited to the needs of students from the rural areas. This act provided for annual appropriations, beginning with $1,500,000 in 1918 to $7,200,000 in 1926 and thereafter.[13]

In connection with consolidated schools, the laws of forty-three states provide for the transportation of pupils, and such facilities are provided in the other five states under the authority granted to trustees to provide for the welfare of their districts. In a study published by the United States Bureau of Education in 1927, it was stated that the annual expenditures in the states for school transportation exceeded $30,000,000. One fourth of the states were each spending more than $1,000,000 annually in transporting children to schools, while in Indiana the amount exceeded $3,000,000. While nearly all states contribute indirectly from state funds for local school transportation, the New England states, Delaware, Pennsylvania, New York, Ohio, Michigan, Wisconsin, Minnesota, North Carolina, and Texas contributed specifically from state funds towards such transportation.[14] Four states provide a part of the initial cost of the transportation facilities. Some allow a definite amount each year towards operating costs, as in Virginia where the state pays $100 for each truck or wagon; in Michigan the amount is $400. Some pay a percentage of the operating costs. Delaware pays all of the initial cost, as well as all of the operating costs. By granting aid for transporting pupils to consolidated schools the state can encourage and aid in the formation of such districts.

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[12] *Bulletin, 1919, No. 7, United States Bureau of Education; Bulletin, 1923, No. 41, United States Bureau of Education.*

[13] The national government is now spending from $35,000,000 to $40,000,000 a year for educational purposes. For a consideration of the activities of the national government in this field, see William A. Cook, *Federal and State School Administration* (1927).

COUNTY SCHOOL OFFICERS

In most of the states the county is a unit of school administration. County superintendents of schools are found in thirty-nine states, and county boards of education in thirty states. But in most cases these have mainly powers of supervision over the local school authorities in towns, townships, or districts. In some states the county authorities have larger powers; and about a dozen states have a strong county unit system of school management.

The county superintendent is elected in twenty-four states; he is appointed by the county board of education in Alabama, Arkansas, Louisiana (parish), Kentucky, North Carolina, Maryland, Ohio, New Mexico, and Utah. In Iowa, Indiana, and Pennsylvania, the school directors of the various districts or school townships meet and select the county superintendent. In Tennessee, the county court appoints the county superintendent. Two states vest the selection in state authorities: in New Jersey, he is selected by the commissioner and the state board of education, and in Virginia, by the state board of education with the consent of the upper house of the legislature.

The powers and duties of county superintendents vary in the different states. They have been classed as administrative, judicial, supervisory, and inspectoral. Among the administrative duties are requiring annual reports from teachers and making reports to state authorities. They also have duties in connection with the distribution of school funds to the schools in the county. Their judicial powers include settling disputes from district school boards and disputes between teachers and school boards. Their duties in some states include the examination of teachers and in some cases also elementary school pupils. In most states the office of county superintendent is not a powerful one; "Most of the county superintendents have little power in a real professional way. They act as a 'rubber stamp' for county commissioners or state departments. They spend their time in 'inspecting,' 'visiting,' 'supervising'—in short, in *advising* what should be done."[15] Their most important duties are supervisory.

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[14] John C. Muerman, ''Transportation of Pupils at Public Expense,'' *Rural School Leaflet,* No. 2, April, 1922; Chamber of Commerce of the United States, *The Rural School and the Chamber of Commerce;* Edward W. Garris, ''Transportation of School Children in South Carolina,'' *Bulletin of University of South Carolina,* March, 1924; James F. Abel, ''Recent Data on Consolidation of Schools and Transportation of Pupils,'' *Bulletin, 1925, No. 22, United States Bureau of Education;* James F. Abel, ''An Annotated List of Official Publications on Consolidation and Transportation of Pupils,'' *Rural School Leaflet, No. 9, United States Bureau of Education,* January, 1923; George Howard, Jr., ''Problems Involved in the Administration of State Aid for Transportation,'' 62 *Proceedings of Nat'l Educational Assoc.* 689-93 (1924).

County boards of education are elected in about ten states; in some states they are elected from the county at large, as in Alabama and Kentucky; in others they are elected from districts, as in Louisiana and Utah. In four states the county board of education is selected by the county commissioners; in six by the county superintendent; in one by the grand jury; in one by the district court; and in another by the county court. In two states the board is made up of members who serve ex officio. In Maryland county boards of education are appointed by the governor; in North Carolina by the legislature; and in South Carolina by the state board of education.[16]

The powers of county boards of education vary greatly. In some states they are very limited: in Iowa, South Dakota, and West Virginia the boards merely select text-books; and in Indiana, Oklahoma, Kansas and Montana their functions are of minor importance. In Ohio, Wisconsin, and Oregon, they are supervisory rather than administrative. In some states such boards have charge of county high schools.

More extensive powers have been conferred upon the county boards of education in the strong county unit states. In these states they have general control and management of the schools of the county, including regulating the boundaries of school districts, the erection and location of buildings, supplying necessary equipment, fixing the course of study, and the selection of text-books. Usually they have also power to engage teachers and other employees and to fix their salaries, on the recommendation of the county superintendent.

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[15] William A. Cook, *Federal and State School Administration,* p. 177.

[16] See William A. Cook, *Federal and State School Administration,* p. 178.

THE COUNTY UNIT [17]

The use of the county as the primary unit of school administration is not new, Maryland having adopted the county system in 1865, Louisiana in 1870, Florida in 1885, and Georgia in 1887. The plan has shown its greatest development, however, during the twentieth century; and by 1927 the county unit of school administration of the strong type had been adopted in Alabama, Florida, Georgia, Louisiana, Maryland, North Carolina, Kentucky, Tennessee, Virginia, New Mexico, and Utah. States which have been classed as having the weak county unit form are Arkansas, Mississippi, South Carolina, Texas, Ohio, Arizona, California, and Washington. The states of Iowa, Minnesota, and Wisconsin have been referred to as having made "feeble beginnings" in county unit organization.[18]

There is no agreement as to the extent of power that must be conferred upon county educational authorities before a state may be said to have the county unit system of school administration. States which are classed as county unit states by some writers are not so considered by others; likewise, there is a difference of opinion as to whether some states have a strong or a weak form of the county unit plan. It is a question of the power conferred upon the county educational authorities and the degree of autonomy left to the local districts. It does not mean that there are no school authorities below those of the county. In some states local authorities are still elected but with very limited powers. In Louisiana, local boards may be appointed by the parish authorities to exercise such powers as the latter may see fit to delegate to them; in Maryland, the local boards, which are appointed by the county board, have statutory powers reserved to them. But in some states, as Tennessee, there are no educational authorities below those of the county.

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[17] On the county unit system of school administration, see: Benjamin J. Burris, *The County Unit System, How Organized and Administered* (1924); Julian E. Butterworth, "Types of Educational Control in the United States," 15 *Journ. of Educational Research* 349 (1927); A. D. Mueller, *Progressive Trends in Rural Education* (1926), pp. 12-13; Ellwood P. Cubberley, *State and County Educational Reorganization* (1914), pp. 38-39; *U. S. Bureau of Education, Bulletins*, 1914, No. 44, 1919, No. 7, 1925, No. 25.

[18] Montana has an optional county unit law, but up to 1927 only one county was organized under it; only three counties in Oregon had organized under the optional law of that state; and no counties in Nebraska had organized under its county unit law.

While the county unit plan has received the approval of writers on rural school administration, several factors should be considered. Among these are the size of the county and the density of population. It is generally accepted that the single school district is too small a unit and that some larger area should be provided, but the question arises whether in all cases this is the county. In the case of densely populated states as in New England, the supervisory district, formed by the union of towns may be more satisfactory than the county. In Nevada where the state is divided into five districts of from one to six counties each, the population served is smaller than in the case of single counties in other states. The New York Bureau of Municipal Research, in its report on county government in Virginia, suggested that: "In the case of small or poor counties, the administration of the school work may be combined for two or three counties and placed under the supervision of one superintendent." Delaware by act of 1921 conferred such broad powers upon the state board of education that it may be considered to have the state unit plan of school administration.

County high schools and county schools for special types of instruction are maintained in more than half of the states, including a number of states in addition to those where the general public school system is based on the county unit. County high schools are authorized most commonly in the Western and Southern states.[19] More than a hundred county normal schools are reported in Michigan, Ohio, and Wisconsin.[20] County schools of agriculture and domestic economy were organized in Wisconsin in 1901; and since then have been authorized in Minnesota, Michigan, California, New Jersey, North Dakota, North Carolina, and Mississippi. Georgia provides for an agricultural school in each congressional district; and three counties in Massachusetts have agricultural schools. In several states two or more counties may jointly establish schools of these types; and in Mississippi county agricultural schools may be developed into junior colleges.[21]

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[19] Iowa, 1873; Kansas, 1886; Indiana, 1889; Montana, 1899; Oregon, 1901; Nebraska, 1907; California and Colorado, 1909; Maryland, 1910; Nevada, 1912; Oklahoma, 1921; South Dakota, 1921; Georgia.

[20] Cook County, Illinois, has a county normal school; and a county teachers' college has been authorized for Wayne County, Mich. *Public Acts of Mich.*, 1927, p. 238.

Seven of the fourteen counties in Massachusetts maintain training schools for juvenile delinquents. Minnesota has authorized such schools in counties of over 33,000 population; Missouri for Jackson County; and Pennsylvania has authorized county commissioners to establish such schools for children under the care of the juvenile court.[22]

SUPERVISION OF RURAL SCHOOLS[23]

In 1922 thirty-eight states were using the county as the unit of supervision for rural schools. The New England states combine towns into supervisors' unions. In New York, counties are divided into from one to eight supervisory districts, and a district supervisor is elected by the directors of the several towns composing each supervisory district.

In Ohio and West Virginia, either the county, the township, or the district may be used. While the county is usually the unit of supervision in Minnesota, in a few cases it is the district. In Nevada, districts of one or more counties are used. Some states have the same unit for supervision and administration of schools: Alabama, Florida, Kentucky, Louisiana, Maryland, North Carolina, Tennessee, New Mexico, and Utah using the county; and the six New England states using the town or groups of towns.

The county superintendent is the most common authority for supervising rural schools. In most cases, however, such officials have not been able to exercise very close supervision because of the number of schools under their jurisdiction scattered over a considerable area. They are in practice usually limited to one visit to each school to observe the work that is being done.[24] This is inadequate if any worth while supervision of the work is to be exercised. In many states the superintendents also hold an annual institute or teachers meeting, in which there is a discussion of the problems of the rural school. In several states they attempt, through attendance and other reports, to secure some supervision.

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[21] *Wis. Stat.*, 1925, sec. 41.47; *Comp. Laws Mich.*, ch. 112; *Mason's Minn. Stat.*, 1927, sec. 2884; *Kerr's Pol. Code of Cal.*, 1920, sec. 1738; *Comp. Stat. N. J.*, First Supp. 1911-1915; *Supp. to Comp. Laws, N. D.*, 1913-1915, sec. 1455; *Hemingway's Comp. Miss. Code*, 1927, secs. 8782, 8789, 8981; *Gen. Laws Mass.*, 1921, ch. 74; *N. C. Code*, 1927, sec. 5703. In New York, by Act of 1926, the board of supervisors of any county may establish a county vocational and extension board to provide instruction in agriculture, home economics and other special subjects. It is required to coöperate with existing agencies. *McKinney's Consol. Laws of N. Y.*, Education Law. Cf. U. S. Dept. of Agriculture, *Exp. Station Bulletin*, No. 242 (1911).

[22] *Gen. Laws Mass.*, 1921, ch. 77; *Mason's Minn. Stat.*, 1927, sec. 8649; *Rev. Stat. Mo.*, 1919, sec. 13802; *Penn. Stat. Complete to 1920*, sec. 13417.

[23] This discussion on the supervision of rural schools is based largely upon Katherine M. Cook, "Supervision of Rural Schools," *Bulletin, 1922, No. 10, United States Bureau of Education.*

Rural schools have suffered from a lack of expert professional supervision and are clearly inferior to city schools in this regard. In a bulletin published by the United States Bureau of Education it has been suggested that to give rural schools the necessary help there should be created a staff of school supervisors, both state and local, in addition to the district and county superintendents.[25] Several states have now taken steps in this direction.

Wisconsin, by act of 1915, provided for supervising teachers in the counties of that state. They are appointed by the committee on county schools, on the nomination of the county superintendent. All counties may have one supervising teacher, and in case they have over 125 schools they may appoint two. The salary of the supervising teachers is paid by the state and they are under the direction of the state superintendent. A Maryland law of 1922 provides that in each county, employing less than eighty teachers in the white elementary schools, there shall be appointed by the county board of education one supervising or helping teacher; two supervising teachers for between eighty and one hundred and twenty teachers; three for between one hundred and twenty and one hundred and sixty teachers; and one additional supervising or helping teacher for each additional fifty teachers above one hundred and sixty. No one may be appointed who does not hold a certificate in supervision from the state superintendent of schools, nor may any one be appointed without that official's written approval. The state pays two-thirds of the salaries of supervising teachers. Provision is now made in other states for assistant county superintendents in order to furnish a more adequate supervisory force for the rural schools.[26]

[24] The laws of nineteen states require only one visit each year; Georgia requires a visit each sixty days; and Colorado requires that schools be visited three times each year.

[25] H. W. Foght, ''Rural Education,'' *Bulletin, 1919, No. 7, United States Bureau of Education.*

[26] A. D. Mueller, *Progressive Trends in Rural Education* (1926), pp. 88-89; *Ann. Code of Md.* (Bagby), vol. 2, Art. 77, sec. 145.

STATE SUPERVISION

All of the states have a state educational authority which supervises in various degrees the work of the local school agencies; and state supervision of public education is more highly developed than in any other field of local administration. This supervision operates most actively for the improvement of conditions in the rural schools.

At the basis of the system of supervision are provisions for reports, inspection, and advice to local officials and teachers. In all of the states, regular reports are required giving information as to the local schools. In most states certain specific data must be supplied; but there is usually also a general grant to the state department to call for reports on any matter relating to the schools.[27]

Inspection of local schools by county and other local superintendents has been employed for many years as a further means of securing definite information as to local school conditions. This is now being supplemented, and in a few states supplanted, by inspectors or supervisors of the state department. Two-thirds of the states now have such state inspectors, and about half of the states have special inspectors for high schools in addition to those for the elementary schools.

In several states the inspection of schools is more completely under the control of the state authorities. In New Jersey and Virginia,[28] county or division superintendents are appointed by the state board of education; and in Maryland, North Carolina, and South Carolina, county boards of education are appointed by the governor, legislature and state board of education respectively. Nevada, in 1907, abolished the office of county superintendent; and the state is divided into five districts, of one to six counties each, with a deputy superintendent appointed by the state board in each district. Delaware, in 1921, replaced the county plan of supervision by a state system. Seven rural supervisors of elementary schools work under the direction of an assistant state superintendent, three being assigned to one county and two to each of the others. In

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[27] *United States Bureau of Education, Bulletin,* 1922, No. 10; Schuyler Wallace, *State Administrative Control over Cities in the United States* (1928), ch. 4.

[28] Virginia has a system of division superintendents selected by the state board; 79 of the 100 counties each form a separate division, 9 divisions contain two counties, and one division has three counties.

Connecticut, a town with less than twenty schools can by petition come under state supervision; and the greater part of the territory of the state is under state direction.

Reports and inspections offer a widely used opportunity for advice to local school authorities and teachers. But other methods are also employed for this purpose. Some forty states provide for teachers institutes, and more than half of the states provide for conferences of county and local superintendents for the consideration of school problems. In three-fourths of the states there are provisions for the publication of bulletins and circulars of information and advice on school affairs.

Other methods by which the states exercise more direct control to improve school conditions, especially in rural areas, are by establishing minimum school terms and standards of plant and equipment, compulsory attendance laws, control over the selection of teachers, regulation of the course of study, and state selection of text-books. These and other requirements are often made conditions of receiving state school grants; or specific grants are made for meeting particular requirements.

Practically all of the states exercise some control over the selection of teachers in the local schools, by means of examinations and the issue of certificates of qualification. In some states, the local superintendents act as agents of the state department in the physical conduct of the examinations; but the examination questions are usually prepared by the state authorities, and the papers are sent to the state department and graded by state examiners. In some states the local superintendents may issue certificates for limited periods; and many of the larger cities have their own examinations.[29]

In about two-thirds of the states, the state departments have also power to revoke teachers' certificates, which operates to debar the holders from teaching positions. In a dozen states, the removal of teachers by local authorities is subject to review by the state departments.

Some control over the courses of study is now provided in nearly all of the states. In some states this is limited to requiring instruction in certain subjects, of which the most common is for courses in agriculture, home economy, and the industrial arts. But two-thirds of the states now authorize a general curriculum for elementary schools, and most of these also provide for a high school curriculum.

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[29] William A. Cook, *Federal and State School Administration,* p. 222; Frank H. Herrin, "County Administration of School Affairs in Relation to the State Department." 47 *Annals of Amer. Acad. of Pol. and Soc. Science,* 153 (1913); Schuyler Wallace, *State Administrative Supervision over Cities in the U. S.,* ch. 4; *U. S. Bureau of Education, Bulletin,* 1927, No. 19.

About thirty states now exercise some control over text-books used in the schools, by providing for a list of approved books, or in some cases prescribing a list of books which must be used. Still other less general methods of state supervision over local schools are employed in a considerable number of states. In addition to the power of issuing regulations on specific matters, as in prescribing forms for reports, teachers' examinations, and the courses of studies, some eighteen states give a general grant of power to make rules and regulations for the conduct of school affairs. Twenty states authorize appeals from local school authorities to the state department. In New York, where the decisions of the commissioner of education in such cases are final, they form an important body of administrative school law, supplementing the statutes.[30] About a dozen states authorize the state departments to prescribe examinations in elementary schools, and five states authorize state examinations in high schools. A dozen states require the approval by the state departments of plans for the construction of school buildings. Ten states make special provision for the examination of the financial accounts of local school authorities; and about the same number authorize the requirement of forms of accounts.

In the aggregate the powers of state supervision over local schools form an impressive total. There are, of course, wide variations between the different states; and no one has all of the methods noted. The largest degree of legal power seems to be conferred in New York, Alabama, Arizona, California, Idaho, and Oregon; the smallest in Connecticut and South Dakota. But the extent to which the powers are exercised and the actual influence over school management depend largely on the number and efficiency of the staff in the state departments, and the energy and tact which they display.

A recent study of state departments of education reports that only nine states had staffs of forty or more persons, the number suggested as needed for states such as Indiana or Wisconsin.[31] New York had the largest number, 525; Pennsylvania was next with 160, Ohio had 56, North Carolina 57, and Minnesota, 49.

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[30] John S. Brubacher, *The Judicial Power of the N. Y. State Commissioner of Education* (1927).

STATE AID [32]

A part of the cost of maintaining public schools in all states is paid by the state. The proportion thus paid varies from Kansas, in which the state provided 1½ per cent of the cost in 1925, to Delaware, which provided 81½ per cent. Among the states which furnish as much as 40 per cent of the total school revenues, are Alabama, Kentucky, New Jersey, and Texas. The state funds which are distributed to schools are derived from various sources, the most common being the general property tax. The personal income tax is a source of school revenue in six states; and a part of the proceeds of an inheritance tax is devoted to school purposes in eight states. Seven states levy a corporation tax specifically for schools, while seven others devote a part of such a tax to school purposes.[33] Severance taxes are used for school purposes in five states, while eight states derive revenue for school purposes from occupational, business, and license taxes. Four Southern states have a tobacco or cigarette tax, the revenues being used wholly or largely for schools.[34]

State funds or state aid was formerly distributed to the local areas in proportion to school population or school attendance. While these methods are still used to distribute some or all of the funds in forty-five of the states, the present tendency is to secure a distribution of funds on other bases. Some of the newer plans attempt to equalize the tax burden for school purposes and to enable all of the local areas to come up to certain minimum standards without carrying an unduly heavy tax burden. Twenty-four states had school funds which were distributed on an equalizing basis in 1927.[35] Thus, the Massachusetts general school fund is distributed

[31] H. E. Schrammel, *The Organization of State Departments of Education* (1926).

[32] See Katherine M. Cook, "Progress of Rural Education in 1925 and 1926," *Bulletin, 1927, No. 15, United States Bureau of Education; Rural School Leaflet, No. 5, United States Bureau of Education* (August, 1922).

[33] Personal income tax is a source of school revenue in Delaware, Massachusetts, Mississippi, Missouri, New York, and North Carolina. The states levying a corporation tax specifically for schools were: Delaware, Kansas, Maine, New Hampshire, New York, and West Virginia.

[34] Georgia, Kentucky, Louisiana, and South Carolina.

[35] *United States Bureau of Education, Bulletin,* 1925, No. 25; 1927, No. 15.

to towns whose valuation is less than a fixed minimum and whose expenditures exceed a fixed tax rate. The amount distributed varies directly as the local tax rate and inversely as the valuation. New York apportions state funds inversely as the assessed valuation in the district, decreasing the aid as the valuation in the district increases,[36] with the object of equalizing to some extent the burden of taxation upon school districts.[37]

While the tendency is toward the use of state aid funds to equalize local educational opportunities and tax burdens, there are some who feel that more emphasis should be placed upon the reward of local effort. In Nebraska, South Carolina, Tennessee, Texas, and other states, grants are made for the maintenance of a minimum school term.[38] In eleven states [39] monetary rewards are given for the maintenance of standard schools. An application of the same principle is seen in a Tennessee law which provides for the distribution of the elementary school fund among the counties on a per capita basis, varying from five dollars per capita in counties that levy less than thirty cents for elementary schools to seven dollars per capita for counties that levy forty cents or more for elementary schools. This principle is also used in some other states in apportioning state funds.

In working out a system of distribution of state aid the responsibility of the state for an adequate educational system in the rural areas should be stressed. If the state continues to use the rural district as an administrative area for educational purposes, even though that unit has proved to be too small, then the state should by a distribution of state funds attempt to equalize educational opportunities in the various districts. The reward method should also be used, in so far as it may be of value in improving standards of educational administration in those districts which are able to do so, even above the state minimum. But state aid should be given first to those districts which are unable to reach this minimum by their own efforts.

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[36] *McKinney's Consol. Laws of N. Y.*, bk. 16, secs. 490 ff. Cf. *Ann. Code of Md.* (Bagby), vol. 2, Art. 77, secs. 204 ff.

[37] Paul R. Mort, *State Support for Public Schools* (1926); Paul R. Mort, "State Aid for Public Schools in the State of New York," *Report of the Special Joint Committee on Taxation and Retrenchment in New York*, 1925.

[38] *Laws of Nebr.*, 1919-21, p. 236; *Acts of S. C.*, 1923, p. 178; *Ann. Code of Tenn.*, Supp. 1926, p. 396; *Ann. Tex. Stat.*, vol. 8, Art. 2922.

[39] Pennsylvania (consolidated schools only), Iowa, Wisconsin, Minnesota, North Dakota, Vermont, West Virginia, and Texas. In Iowa state aid is given to rural school districts maintaining one or more standard schools to the amount of six dollars for each pupil who has attended such school at least six months of the previous year. In West Virginia, standard schools receive one hundred dollars for the second class and one hundred and twenty dollars for the first class, and standard consolidated schools receive up to eight hundred dollars. In other states standard schools receive honorary mention, tablets or certificates. *U. S. Bureau of Education, Rural School Leaflet*, No. 32 (1925), Edith A. Lathrop, "The Improvement of Rural Schools by Standardization."

LIABILITY FOR TORTS

Another question which arises in a discussion of school administration is that of the liability of the school district for the acts of its agents.[40] It is the general holding of the courts that school districts are not liable for such torts, being ''mere arms of the state for the administration of its school system'' and acting in a governmental capacity.[41] The Supreme Court of Indiana has stated that school corporations are ''but the agent of the state for the sole purpose of administering the state system of public education. . . . In performing the duties required of them, they exercise merely a public function and agency for the public good, for which they receive no private or corporate benefit. School corporations, therefore, are governed by the same law, in respect to their liability to individuals for the negligence of their officers or agents, as are counties and townships.''[42]

Under this general rule, a school district is not, in the absence of statute imposing it, subject to liability for injuries to pupils suffered in connection with their attendance at public schools. Thus there can be no recovery of damages for personal injuries caused by negligence in placing a radiator in a gymnasium,[43] for injuries to children on playgrounds,[44] for defective buildings,[45] for injuries received by a pupil in a ''planer'' in a manual training department,[46] or for injuries received by a pupil in being transported to school.[47] This principle of non-liability also extends to a laborer assisting in the construction of a district school building. The contention was made in a case before the Supreme Court of Kansas in 1926 that the erection of a school building was not a governmental function, a distinction being made between providing school facilities and making use of provided facilities for educational purposes. The court refused to accept this argument and held that the school building was indispensable to keeping school, and "providing the building for educational purposes was just as much a sovereign function as utilizing the building for educational purposes." [48] The principle of non-liability of school districts was well summarized by the Supreme Court of Arizona in 1926, when it stated that the overwhelming weight of authority is to the effect that "school districts are not liable for the negligence of their officers, agents, or employees, unless such liability is imposed by statute either in express terms or by implication." [49] The reasoning upon which this principle of non-liability is based is that school districts are quasi corporations and act in a purely governmental capacity.

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[40] See John F. Dillon, *Municipal Corporations* (5th ed.), sec. 1658.

[41] *Howard v. Tacoma School District, No. 19*, 152 Pac. (Wash.) 1004 (1915).

[42] *Freel v. School City of Crawfordsville*, 41 N.E. (Ind.) 312 (1895).

[43] *Spencer v. School District*, 254 Pac. (Ore.) 357 (1927).

[44] *Krutili v. Board of Education of Butler District*, 129 S.E. (W. Va.) 486 (1925); *Bank v. Brainerd School District*, 51 N.W. (Minn.) 814 (1892). Cf. *Rice v. School District*, 248 Pac. (Wash.) 388 (1926).

[45] *Land v. District Township of Woodbury*, 12 N.W. (Ia.) 478 (1882).

[46] *Krutili v. Board of Education of Butler District*, 129 S.E. (W. Va.) 486 (1925).

COUNTY LIBRARIES [50]

The maintenance of libraries may be considered a part of the educational program of the county. County libraries were first authorized by law in Indiana in 1816; the territory of Wyoming also passed a county library law in 1886. There was, however, no appreciable development of book service for rural areas under either of these laws. County libraries were authorized in Ohio in 1898; in Wisconsin in 1901; Oregon in 1903; and in California in 1909. By 1925 county library laws had been passed in twenty-five other states, though in a few of these no libraries have been established. Since that time county library laws have been passed in several other states. In 1929 there were 269 county libraries in 34 states. The largest number was in California, in 46 of 58 counties. Wisconsin had 20 of 71 counties, and Wyoming 17 of 25 counties. Georgia had 7 county libraries and Oklahoma 2, although no law for this purpose had been passed in these states.[51]

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[47] *Horton v. Bienville Parish School Board,* 4 La. App. 123 (1926). Cf. *Williams v. Board of Trustees of District No. 1,* 198 N. Y. S. 476 (1923); *ibid.,* 205 N. Y. S. 742 (1924).

[48] *McGraw v. Rural High School District, No. 1,* 243 Pac. (Kas.) 1038 (1926). Also see *Freel v. School City of Crawfordsville,* 41 N.E. (Ind.) 312 (1895).

[49] *School District No. 48 of Maricopa County v. Rivera,* 243 Pac. (Ariz.) 609 (1926).

[50] Harriet Catherine Long, *County Library Service* (1925); Saida Brumback Antrim and Ernest Irving Antrim, *The County Library* (1914); William J. Hamilton, "County Library Laws in the United States," 45 *The Library Journal* 727 (1920); Julia A. Robinson, "Summary of County Library Laws," 22 *Public Libraries* 17 (1917). For the library movement in England see R. D. MacLeod, *County Rural Libraries* (1923).

The authority to establish a county library is usually vested in the county board. In some cases it may establish such a county library when it sees fit, while in others it can be done only upon petition of a certain number or per cent of taxpayers. In some states, as New York, Nebraska, and Texas, the county board may establish a county library only after a favorable vote of the electorate upon the proposition. The laws in most states provide for the appointment of a county library board in case a library is established; such boards, composed of three to nine members, are usually appointed by the county board. In three states (California, Montana, and Texas), there is no county library board, the library being under the control and supervision of the county board.

Most states provide not only for the establishment by the county of a library, but also provide that such service may be secured by contract with an existing library in the county. While this method is optional in most cases, three states provide only for county library service by this method.[52] This plan of contracting with an existing public library seems to be preferable if the service can be furnished cheaper than by the establishment of a county library. But if there is no public library already in the county, it seems unfair to deny the people library service because it is not possible to make a contract. On the other hand, if there is a municipal library supported from public funds, it may be of doubtful wisdom to create a county library and require the same people to contribute to its support. Some states meet this situation by exempting from the county library tax, cities which already have a tax supported library.[53] Alabama and Minnesota meet it by making a contract mandatory when there is a public library in existence in the county.

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[51] *Bulletin* of the American Library Association, June, 1928; *Rural America*, May, 1929; *Cornell Extension Bulletin* 188, Nov., 1929.

[52] Iowa, Michigan, and North Carolina.

[53] See Ohio, Oregon, Montana, New York, and Wisconsin for various methods and plans of exempting cities which are supporting a library from the county library tax.

The county librarian is selected by the county board in California, Montana, and Texas; in other states by the county library board. While most states place no limitation upon the local authorities in the appointment of a librarian, some provide for the appointment only of persons who have been certified to be qualified for the position by state authorities. The salary of the county librarian is in most states fixed by the library board, but in a few by the county board, and in California by statute. In order to insure the appointment of a competent person, it is well to require that only persons certified as competent librarians by the state library board be appointed, or, as in Illinois and South Dakota, approval of the appointment by the state library commission.

The chief obstacle that has been met in the county library movement is that of cost. While many people recognize the needs and advantages of a county library in order to secure library service for the rural population, they have been unwilling to see this added tax assumed by the county. The cost of library service in certain counties was tabulated in 1923 for the county library exhibits at the American Library Association Conference.[54] The cost in the following libraries which furnish library service, including local city service, was as follows:

County	*Cost*	*Per circulation*	*Per capita*
Washington County, Hagerstown, Md.	$15,735	12 cents	26 cents
Van Wert County, Van Wert, Ohio...	12,926	10	45
Menominee County, Menominee, Mich.	17,430	15	73
Umatilla County, Pendleton, Ore.....	11,496	14	44
Santa Barbara County, Santa Barbara, Calif.	39,585	12	96

The cost of library service to county residents by contract with an existing library in the following counties was as follows:

County	*Cost*	*Per circulation*	*Per capita*
Wayne County, Detroit, Mich........	$11,268	27 cents	17 cents
Vanderburg County, Evansville, Ind..	6,416	13	91
Allen County, Ft. Wayne, Ind........	14,934	44	54
Hennepin County, Minneapolis, Minn.	22,279	24	70

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[54] 48 *Library Journal* 673 (1923).

Harris County, Houston, Texas, which furnished no direct service to Houston, spent $12,262, or a cost per circulation of twenty-four cents and a per capita cost of twenty-five cents.

The average per circulation cost of library service in these counties furnishing library service including local city service was thus 12.6 cents per circulation, and an average per capita cost of 56.8 cents. In the counties furnishing library service to county residents by contract with an existing library, the per circulation cost was 27 cents and the per capita cost was 58 cents.

Some states, as Arkansas and Texas, permit a county to join with another county or counties to establish a joint free county library for the benefit of the coöperating counties.[55] The object of such a provision is probably to keep down the cost of library service in a county with a population so small that the expense of supporting an independent library would be prohibitive. The county library movement, which is one of the newer developments in the field of county government, is still largely in its formative period, and there will unquestionably be important developments in this service in the future.

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[55] *Acts of Ark.*, 1927, p. 831; *Vernon's Texas Stat.*, vol. 3, title 35.

CHAPTER XVII

HIGHWAY ADMINISTRATION

LOCAL ROAD ADMINISTRATION

UNTIL nearly the end of the nineteenth century the building and care of roads in the United States was almost entirely carried on by local governments in counties, towns, and road districts. To a large extent road work (except in cities) was carried on by a labor tax, some of which was commuted by money payments, and little expert engineering construction was attempted.

In the organization of new states, the national government made grants of money from the sale of public lands to promote road building; and it later undertook the construction of the well-known Cumberland road as a national highway. But this latter movement was given up, although the national government developed the policy of land grants, applied largely to encourage railroad construction, and the rapid expansion of the railroad system perhaps retarded the improvement of the public highways by offering a more efficient means of transportation for long distances and absorbing the energies of the country given to the problem of means of communication. After the Civil War the national government did much for the betterment of water transportation by river and harbor improvements. But the country roads of the United States remained to a large extent crude and in bad weather almost impassable.

Beginning towards the end of the nineteenth century the movement for improved highways has steadily developed, along with an increasing tendency towards more centralized administration. Local town, road district, and county authorities have become more active, aided by larger money revenue from taxation, and aid and supervision from the larger governmental units. Special road districts have been established, and there has been a decided tendency towards county supervision and administration. State supervision, state aid and state highway systems have been established in many states. And the national government has inaugurated a new policy of large money grants to aid in the construction of through highway routes.

Thus highway administration is no longer exclusively a problem of local government, but is one in which both state and national governments must also be considered. Nevertheless, much the larger part (estimated at 90 per cent of the total mileage) of the country roads in the United States remains under the control of the local authorities in counties, towns, and local road districts.

In the North Atlantic and North Central States, the town or township is still the most common area for local highway administration. While the tendency today is to remove the more important roads from the jurisdiction of township authorities, it was estimated in 1920 that probably not less than 70 per cent of the total mileage of highways in these states was administered by town and township officials. The authorities provided in the township for highway administration show great variation. There may be several road commissioners, but the recent tendency is towards one; in some cases they are appointed, but usually they are elected.

The township is too small a unit to attract into its service men who are able to cope with the problems presented. ''It seems hopeless to expect any township system of administration ever to afford a real professional opportunity to ambitious men who are qualified for highway service.'' The tendency today is away from the township as a unit of highway administration and it has been suggested that the trend of events ''seems destined eventually to eliminate the township official entirely from the highway administrative system or place him under rigid supervision from some competent authority.''[1]

COUNTY UNIT PLAN

In the Southern and Western states the county is the chief, and in some state the exclusive, unit of local administration for highway purposes; and in the North Central and North Atlantic states counties usually have jurisdiction over the more important roads and bridges, and in a few of these states county authorities have been authorized to take over control of all local roads.

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[1] For a serviceable study of highway administration see Thomas R. Agg and John E. Brindley, *Highway Administration and Finance* (1927). Also see T. R. Agg, *American Rural Highways* (1920). On highway administration in the American colonies and its earlier development in the states see George E. Howard, *Local Constitutional History of the United States* (1889), vol. 1, pp. 207-14.

The county commissioners in Maryland have control over county roads and bridges. They may appoint road supervisors to have charge of this work; and whenever they are of the opinion that the public interests require it, or will be thereby advanced, they may commit the whole matter of constructing and repairing public roads and bridges to the charge of competent and scientifically educated civil engineers. These engineers direct and manage all such work under the immediate control of the county commissioners.[2] Each county commissioner's district in Florida is declared a road district. While the roads and bridges in such district are under the supervision of the board of county commissioners, it is their duty to appoint a competent person as overseer for such subdivisions.[3]

Boards of county commissioners in Washington have general control and management of the roads in their respective counties. Each county commissioner is ex officio road commissioner of the several road districts in his commissioner's district. The board is authorized to appoint a sufficient number of road supervisors.[4] In Nevada, the board of county highway commissioners consists of five members, the three county commissioners, the county assessor, and the district attorney.[5] The board of county commissioners in Montana has general supervision over the highways in the county. It may divide the county into suitable road districts and place each in charge of a competent road supervisor.[6]

Some states make it optional with the county whether it shall operate under a county unit road system. The board of supervisors in Michigan may, upon a majority vote of the board or upon petition of 10 per cent of the freeholders residing in each of the townships, submit the question of adopting the county unit road system to the electors of the county. In any county where the county road system is adopted, a board of county road commissioners of one or more, but not exceeding three, as determined by the county board, is elected by the people of the county. Such board is authorized to employ a competent county engineer to prepare plans and specifications for all roads and bridges and to exercise

[2] *Ann. Code of Md.* (Bagby), vol. 1, p. 871.

[3] *Rev. Gen. Code of Fla.,* 1920, vol. 1, sec. 1598.

[4] *Remington's Comp. Stat. of Wash.,* 1927, secs. 6398–1-3.

[5] *Rev. Laws of Nev.,* 1919, vol. 3, p. 2898.

[6] *Rev. Codes of Mont.,* 1921, vol. 1, sec. 1622.

general supervision over all construction.[7] Kansas also makes it optional whether a county shall operate under a county unit road system, or a county and township road system.[8]

In some states the county authorities have supervision over the township road officers and direct control over the more important roads. The purpose in these states is to develop within the county the more important highways—a county trunk line system, just as the states are doing for the state as a whole. An act passed in Missouri in 1927 is of interest in this connection. The act created a county highway commission in each county of the state. Such commissions are composed of four members appointed by the county court for a term of four years. It is the duty of the county highway commission to locate, construct, and maintain, subject to the approval of the state highway commission, a system of county highways, not exceeding in the aggregate one hundred miles in any county, by connecting by the most practical route the several centers of population in the county. The object of the law is to afford a connection of such centers of population as are not located on any state highway with such state highway, and to connect the centers of population of adjoining counties with county highways.[9] A system of main roads within the county should be developed, and the Missouri law is one means of securing such a plan.

The county being a larger unit is able to attract into its service a better class of men for purposes of road administration. The Special Joint Committee on Taxation and Retrenchment in New York, in its report of 1923, stated that the first step in the establishment of an economical and business-like system for constructing and keeping up good roads appeared to be "the development of a strong authority in each county responsible for administrative control over all road work." The committee felt that "the adoption of the county as the unit would make possible the complete elimination of duplication in labor and equipment and the development of a sound policy with regard to the purchase and maintenance of road machinery and other equipment. The direct economy resulting from such a policy would be very large."[10] There is a noticeable tendency today towards the use of the county unit for highway purposes; and it seems that it is destined to take a more important part in road construction and maintenance in the future.

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[7] *Comp. Laws of Mich.*, 1915, vol. 1, secs. 4347-56.

[8] *Rev. Stat. of Kas.*, 1923, 68–517-18.

[9] *Laws of Mo.*, 1927, p. 421.

[10] *Report of the Special Joint Committee on Taxation and Retrenchment*, 1923, pp. 183-84.

The question has arisen whether the county is in all cases a large enough unit for purposes of local highway administration. The New York Bureau of Municipal Research, in its report on county government in Virginia, pointed out that in small counties in which the needs of road administration are limited, the establishment of a complete organization is unnecessary. The report suggested that "the logical thing to do to meet this situation would be to consolidate existing counties and establish a suitable administrative organization in each of the new counties thus created. As an alternative to this, it should be entirely possible, for purposes of road administration, to effect a consolidation of two or more counties, and establish a suitable administrative organization under a single county road engineer, who would have jurisdiction over all road work within the combined area." [11] Some attempts have been made at the consolidation and coöperation of counties for purposes of road construction and maintenance. While the movement has thus far made little progress, attention may be called to some of the statutes which provide for such coöperation of counties.

An act passed in California in 1917 provided for the creation of joint highway districts to be composed of two or more counties for the purpose of constructing public highways. The governing board of such district is appointed by the board of supervisors of the counties forming the district. The cost of the improvements are assessed by the board of directors upon the state and the several counties comprising the district according to the benefits that may result from the construction of such highway, or it may assess not to exceed one-fourth of such estimated cost upon land in private ownership. Appeal may be taken by the state or by the counties from the assessment levied against them to the advisory board of the state engineering department. The assessments against the state and the counties are to be paid in five annual instalments.[12]

Boards of county commissioners in Kansas are authorized to appoint a competent road builder or supervisor of roads as county engineer. In any county where there is not a sufficient amount of road or bridge work to keep the county engineer employed throughout the year, the board of county commissioners, with the approval of the state highway commission, may unite with the board of commissioners of an adjoining county or counties and form a county engineer district and employ an engineer for the district. The boards of county commissioners and the state highway commission in forming such county engineer districts must be governed by the area, mileage of public highways, number of water-courses, population, railroad facilities, assessed valuation, and the total amount of funds being spent in such counties for roads and bridges. In no case may more than six counties nor a total assessed valuation of more than one hundred million dollars be included in a district.[13]

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[11] *County Government in Virginia,* p. 76.

[12] *Gen. Laws of Calif.,* 1923, Part 1, Act 3269.

Two or more counties in Michigan may employ the same county highway engineer if the work of one or more of such counties is not enough to employ the whole time of such engineer. Michigan also by act of 1925 permits two or more counties to combine for the purpose of establishing a system of super-highways. When two or more counties combine for this purpose, the work is in charge of a super highway commission, composed of one state highway commissioner and the three county road commissioners from each of the counties so uniting.[14] Pennsylvania, South Dakota, Oregon, and a few other states also provide for the coöperation of counties on road building projects.[15]

While there is this tendency in a few states to secure a larger unit than the county for purposes of road construction and maintenance it seems doubtful whether this movement will become a general practice. The county seems to be the future unit of local road administration. While it may be too small for some purposes, as the construction of main highways and highways connecting county seats, the solution of this problem seems to be the establishment of a system of state highways and more supervision of county highway administration. Local jealousies and the failure to agree upon the apportionment of the cost of an improvement are obstacles that will be hard to overcome in the union of counties into larger highway districts.

COUNTY ROAD ADMINISTRATION

The general responsibility for locating, planning, and financing county roads is usually vested in the county boards; but the direct management and supervision is often in charge of a single official, styled in different states supervisor, superintendent, or engineer. Formerly county surveyors, who were usually elective officers, had some functions in surveying roads, and in some states had charge of the construction and maintenance of county roads. But during the present century most states have provided for a county road officer, who is usually appointed (but in some states elected), and who is expected and sometimes required to have some engineering training. Thus New York, before 1906, had authorized county boards to appoint county engineers to have charge of county roads; and by 1913 such county road officers were authorized or required in three-fourths of the states.

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[13] *Rev. Stat. of Kas.*, 1923, 68-503.

[14] *Comp. Laws of Mich.*, 1915, vol. 1, sec. 4356; *Public Acts of Mich.*, 1925, p. 747.

[15] *Pa. Stat. Complete to 1920*, secs. 6549-50; *S. D. Rev. Code*, 1919, vol. 2, secs. 8522-36; *Ore. Laws*, 1920, vol. 2, secs. 4617-24.

Some illustrations may be given of recent and present laws on this matter. County boards in Virginia may, if they deem it advisable, appoint a county road superintendent ''who must be a civil engineer, or a man well versed in practical road building, and competent to establish grades and keep the roads and records as required by law.'' The county board may also appoint and employ for each of the magisterial districts of the county a superintendent of roads.[16] County courts in West Virginia may appoint as county road engineer some person who is ''a practical road builder'' and who holds a certificate of efficiency from the state road commission. If the county court does not appoint a county road engineer, it may appoint a competent man as road supervisor. The county court may also appoint a road superintendent for each magisterial district.[17]

The laws of Missouri and Arizona are illustrative of those in which fairly extensive powers over highway administration have been centralized in a county engineer. County courts in Missouri are authorized to appoint a highway engineer. He has direct supervision over all public roads of the county, over the road overseers, and of the expenditure of all county and district funds made by the road overseers of the county. It is his duty to hold an annual meeting at the county seat each year of all road overseers of the county for consultation and conference touching the conditions and needs of the roads and bridges of the county and methods of improving them. The law provides that at such meetings the county engineer ''shall instruct the overseers in the best and most economical plans for the working and im-

[16] *Va. Code of 1924,* secs. 2019, 2039.

[17] *Barnes W. Va. Code,* 1923, pp. 773, 776.

proving roads, collecting and expending the district road funds, and if practicable, adopt a uniform system of road work for the county.''[18]

The Arizona legislature in 1913 abolished the offices of county surveyor and county road superintendent and created the office of county engineer. The board of supervisors of each county was authorized to appoint as county engineer ''a competent civil engineer and competent road builder.'' The county engineer, under the direction of the board of supervisors, has charge of the locating, designing and constructing of all highways, bridges, and other engineering construction undertaken by the county. Subject to the approval of the board of supervisors, the county engineer appoints all assistants necessary for the proper prosecution of the work pertaining to his office.[19] Boards of county commissioners in North Dakota were empowered in 1911 to appoint a competent engineer or practical road builder. It is his duty to survey, lay out, superintend, and inspect the construction and maintenance of all roads and ditches connected with the construction of highways.[20] The boards of county highway commissioners in Nevada are given the power to appoint a county road supervisor whose duty it is, under the direction of the board, to take charge of all county roads, supervising and directing the building, repairing, and maintaining of the same.[21]

Among the other states which make use of a single supervisory authority in county highway administration are Illinois, Indiana, Nebraska, Arkansas, Texas, and Utah.[22] Colorado counties in which the revenue for road purposes is over $12,000 may elect a county road supervisor who may have the entire supervision of all roads and bridges in the county.[23] Washington also uses the method of election of the county engineer.[24] Wisconsin counties may appoint a county highway commissioner; but in lieu thereof they may by resolution request the state highway commission to take charge of the work of constructing and maintaining the highways built with state aid.[25]

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[18] *Rev. Stat. of Mo.*, 1919, vol. 3, secs. 10782-799.

[19] *Rev. Stat. of Ariz.*, 1923, p. 890.

[20] *Comp. Laws of N. D.*, 1913, vol. 1, sec. 199a.

[21] *Rev. Laws of Nev.*, 1919, vol. 3, p. 2902.

[22] *Digest of Stat. of Ark.*, 1921, sec. 5267; *ibid.*, secs. 5267, 5279; *Comp. Stat. of Nebr.*, 1922, sec. 2804; *Vernon's Texas Stat.*, vol. 19, sec. 6743; *Burns' Ind. Stat.*, 1926, vol. 2, sec. 8506; *Comp. Laws Utah*, 1917, sec. 2820.

[23] *Comp. Laws of Colo.*, 1921, sec. 1247.

[24] *Remington's Comp. Stat. Wash.*, 1922, vol. 2, sec. 4143.

The New York Bureau of Municipal Research, in its report on the survey of county government in Virginia, pointed out that "there is little advantage, and many disadvantages, in having administrative control of road matters under a board. A far better arrangement is to have a single responsible head appointed by the local board of supervisors, and limiting the powers of the latter to those relating to the determination of policy and exercising the necessary legislative functions required in connection with road administration." The use of county engineers and county superintendents of highways illustrates this tendency towards centralization in a single officer. The New York Bureau stated that "the position of county road engineer should be established. Each county should be required to appoint such an engineer except that two or more counties should be permitted to unite in retaining the services of the same engineer, where conditions will permit such an arrangement." It was suggested that the appointment of a county road engineer should be made subject to definite experience qualifications fixed by the state commissioner of highways and approval by that official of the appointment.[26]

HIGHWAY FINANCE

The general problems of county finance are discussed in other chapters, but it is desirable to consider some of the special questions which arise in highway administration. The money for township and county road administration is largely raised by taxation, the maximum levy being usually limited by state law. Some use is still made of the poll or labor tax for financing the improvement and repair of highways.

In connection with the question of highway financing, attention should be called to the use of special districts and the levy of special assessments or betterment taxes against benefited property owners. Indiana, as early as 1905, provided for the improvement of roads by the assessment of lands benefited. This could be done only upon petition by a majority of the landowners whose lands were within one mile of the proposed improvement.[27] There has been a marked development of this means of financing highway construction and maintenance.

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[25] *Wis. Stat.*, 1923, vol. 1, sec. 82.03.

[26] *County Government in Virginia*, pp. 69, 74.

[27] *Burns' Ind. Stat.*, 1926, vol. 2, sec. 8415. Also see special assessment law of 1921; *ibid.*, secs. 8433-8505.

Michigan provides for special assessment districts for improving highways. Such districts may be created by the county road commissioners upon petition of the owners of a majority of the lands fronting upon the highways proposed to be improved. The apportionment to the county, the township, and the property owners in the assessment district of the per cent of the total cost of construction that each shall pay is made by the county road commissioners.[28]

Iowa also provides for special assessment districts for graveling, oiling, or other suitable surfacing of certain classes of roads. Such districts may be formed upon petition of 20 per cent of the owners of the land within the proposed district. Only 25 per cent of the cost of the improvement is assessed against the benefited lands, the remaining 75 per cent being paid by the county, or by the county and the township, depending upon the class of road being improved.[29]

Special road improvement districts in Nebraska are limited to counties of less than 40,000 population. The district is formed by the county board upon a petition being signed by owners of a majority of the acreage in the proposed district. The law provides that the district be divided into four equal zones on each side of the highway to be improved. The cost must be computed as follows: 50 per cent to the zones lying next to the highway; 25 per cent to the second zones; 15 per cent to the third zones; and 10 per cent to the fourth or outer zones.[30] Utah also makes use of the zone plan for assessing betterment taxes for special road districts. A part of the cost of improvements in such districts is assessed upon the land of abutting property owners, the property being divided into zones; 50 per cent of the total cost is laid upon the first zone, 30 per cent upon the second, and 20 per cent upon the third.[31]

Other states which make use of special benefit assessments for constructing highways are Ohio, Alabama, Mississippi, Arkansas,

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[28] *Comp. Laws Mich.*, 1915, vol. 1, secs. 4671-4706. Also see *Public Acts Mich.*, 1925, p. 269.

[29] *Code of Ia.*, 1927, ch. 241.

[30] *Comp. Stat. of Nebr.*, 1922, sec. 2676.

[31] *Comp. Laws Utah*, 1917, sec. 2831.

Oklahoma, Kansas, and Washington.[32] Connecticut levies special assessments for special benefits accruing from the establishment of a trunk line highway system. The assessment of such benefits in that state is made by the state highway commissioner.[33]

In twenty states, counties receive part of the gasoline tax, and in a few states part of the vehicle taxes, which are levied by the state government. The proportion to the counties ranges from 25 per cent in Alabama, Florida and Ohio, to 100 per cent in Wyoming. In most of these states the distribution to the counties is from one third [34] to one half.[35] Several different bases of distribution are used: the amounts collected, motor vehicle registration, equally, road mileage, and ratio of local taxes to the total of taxes paid in the state.[36]

Wheel taxes and vehicle taxes are used in many cities as a source of revenue. Provision is now made in a few states by which counties may levy such taxes upon vehicles using the county highways. The governing body of Alabama counties may, for the purpose of maintaining the public roads and bridges of the county, impose upon the owners of all vehicles, a license tax not to exceed one-half of the state license.[37] County courts in Arkansas are empowered to levy license fees upon wagons and vehicles using the county highways if the weight exceeds 4,500 pounds.[38] A few other states make provision for such taxes by counties. Such local taxes permit particular counties to improve their roads, but is not so conducive to a general betterment of road conditions, and the apportionment to the counties of a part of the state automobile license fees and gasoline taxes seems a preferable plan from an administrative point of view.

BONDS FOR HIGHWAY PURPOSES

County township and road districts are also usually given the authority to issue bonds for road construction, subject in most cases to the approval of the proposed bond issue by the voters. There is usually a constitutional or statutory limit to the total amount of bonds that may be issued and often other requirements.

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[32] *Page's Ohio Code,* vol. 1, secs. 1191, 6967; *Code of Ala.,* 1923, vol. 1, sec. 1390; *Rev. Stat. of Ariz.,* 1913, p. 1653; *Digest of Stat. of Ark.,* 1921, sec. 5399; *Hemingway's Miss. Code,* 1927, vol. 2, sec. 4048; *Comp. Okla. Stat.,* 1926, ch. 85-A; *Rev. Stat. Kas.,* 1923, 68-701 ff.; *Remington's Comp. Stat. Wash.,* 1927 supp., secs. 6598-6646.

[33] *Gen. Stat. Conn.,* Rev. of 1918, vol. 1, sec. 1500-02.

[34] Georgia, Illinois, Indiana, Iowa, Oklahoma, Pennsylvania, and Virginia.

[35] California, Colorado, Louisiana, Mississippi, and Nevada.

[36] F. G. Crawford, *The Administration of the Gasoline Tax.*

[37] *Code of Ala.,* 1923, vol. 1, sec. 1366.

[38] *Digest of Stat. of Ark.,* Supp. 1927, sec. 5166 g3.

Arizona and California laws authorizing bond issues for highway purposes include unusual provisions requiring preliminary surveys and a definite plan. In Arizona, whenever the question of the issuance of bonds for the purpose of constructing or improving the highways of the county is to be submitted to the voters, the county board must appoint a county highway commission of three members in case the proposed bond issue is over $2,000,000. When the proposed issue is less than that amount the county board of supervisors act ex officio as a county highway commission. Immediately upon its appointment the commission proceeds to investigate the public highways of the county and prepares a report and maps showing the highways which should be constructed in case the bond issue is voted. The commission must report to the board of supervisors at least twenty days before the election. The report is then published by the board of supervisors without any changes for a specified number of issues in a newspaper of the county. The call for the election for the bond issue is limited to the construction and improvement of the public highways included in the report and maps of the highway commission. In case the vote on the bond issue is favorable, all work is done under the supervision and direction of the highway commission.[39]

Boards of supervisors in California, upon receiving a petition signed by ten per cent of the freeholders of the county asking that the question of the issuance of county bonds for highway purposes be submitted to the voters, may appoint a highway commission. Such commissions, which consist of three members, are to make a careful study of the highway system of the county and determine which highways should be improved and the estimated cost. If the report is approved by the board of supervisors, they must without delay call an election to determine whether bonds of the county shall be issued in the amount recommended by the commission for the purposes stated in the report. In case the vote of the people is favorable, the work is done under the supervision and direction of the highway commission. The members of the commission receive five dollars per diem for each day actually and necessarily spent in the discharge of their duties.[40]

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[39] *Sess. Laws Ariz.*, 1922, ch. 32.

[40] *Gen. Laws of Calif.*, 1925, Part 1, Act 3259.

STATE AID

Many of the states have made provision for state aid to counties for road construction and maintenance, and a number of states have established systems of state highways built and controlled by the state. New Jersey provided for state aid for highway construction in 1891. Other early state aid road laws were passed in Massachusetts and Vermont in 1892, Connecticut and California in 1895, and Maryland and New York in 1898. Some consideration will be given to the various types of laws providing for state aid to counties for road construction and maintenance.

Boards of supervisors in California, by act of 1913, may, by not less than a four-fifths vote petition the state department of engineering to have a main public highway in the county improved and maintained by state aid. If the state department approves the proposed plan, the highway becomes a state highway, and is constructed and repaired as the department directs, under the supervision of the county engineer or surveyor. All bridges and culverts must first be constructed by the county in a manner satisfactory to the department before any state aid will be given. Two-thirds of the cost of construction of the highway is paid by the county and one-third by the state. The cost of maintenance thereafter is equally divided between the state and the county, the work being done as the state department directs under the supervision of the county engineer.[41]

The Delaware legislature at its 1919 session authorized the state highway department to set aside annually a sum of not less than $300,000 to be offered in equal proportions to the three counties of the state for the purpose of the permanent improvement of such roads as were mutually agreed upon by the state highway department and the governing body of the county. The law provided, however, that such sums should be paid out only when the governing authorities of the county contribute equal amounts.[42]

State aid in Illinois, Maryland, and Florida is also contingent upon the county assisted providing not less than one-half the total cost of the work.[43] Pennsylvania, which not only provides for state aid to counties but also to townships, limits the amount that may be paid by the state to not more than 50 per cent of the cost of any road improvement.[44] State aid in Arkansas is also limited to 50 per cent of the actual cost of the improvement. No state aid may be given unless provision is made by the county for a tax sufficient to maintain such road to the satisfaction of the state highway department.[45] Application for state aid in Alabama is made to the state highway department, and if approved by it, appropriation is made out of the state highway fund of "such part of the estimated cost of such work as it may deem proper and the state highway department shall proceed to do such work by contract or with its own forces."[46]

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[41] *Gen. Laws of Calif.*, 1923, Part 1, Act 3288.

[42] *Laws of Del.*, 1919, p. 153.

[43] *Cahill's Ill. Rev. Stat.*, 1923, ch. 121; sec. 8; *Ann. Code of Md.* (Bagby), vol. 2, p. 2842; *Rev. Gen. Stat. of Fla.*, 1920, vol. 1, sec. 1197.

State aid roads are also provided for in Connecticut. Three-fourths or seven-eighths of the cost of such roads is paid by the state, depending upon the assessed valuation of the property in the town in which they are constructed. Such highways are designated by the state highway commissioner upon petition of the selectmen of the town.[47] State aid for counties is provided in Wisconsin, but in no case may the state pay more than 40 per cent of the cost of any improvement.

Michigan provides for "state reward roads" to aid counties in improving their highways. The state highway commissioner, or some one acting under his authority, inspects a road when completed and for which application for state reward has been made. The reward varies from $250 per mile to $900 per mile, depending upon the class and width of the road.[48]

Still another form of state aid is found in North Carolina. By act of 1919 the state treasurer was authorized to issue bonds to the extent of $400,000, the proceeds to be loaned to the counties of the state to be used in the construction of surfaced roads.[49]

State aid roads are also provided for in other states, but the cases noted above indicate the wide variation in practice in extending aid. State aid provides a means by which the state may raise the standards of road administration without taking over the complete control and administration of this function. It is also a means, and a useful one, by which the state may supervise and control this function in the hands of the counties. The success of state aid has been such that we may expect further development in the future. In some states it has been a stage preceding the direct building of a state highway system.

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[44] *Pa. Stat. Complete to 1920*, secs. 19220-42.

[45] *Digest of Stat. of Ark.*, 1921, sec. 5201.

[46] *Code of Ala.*, 1923, vol. 1, sec. 1323.

[47] *Gen. Stat. of Conn.*, Rev. of 1918, vol. 1, sec. 1481.

[48] *Comp. Laws of Mich.*, vol. 1, sec. 4364.

[49] *Consol. Stat. of N. C.*, 1919, vol. 1, secs. 3600-3618.

NATIONAL AID

National aid for the construction of highways has an indirect effect upon county highway administration. The national government began a policy of granting aid or subsidies to the states for highway construction in 1916 with an appropriation of $75,000,000 for five years. The amount granted to the states for road construction has been increased to over $81,000,000 in 1927. The mileage of surfaced roads in the United States has practically doubled since the passage of the first federal aid act, over seventy thousand miles of federal aid roads having been completed up to 1928.[50]

Before federal aid will be granted to a state for the construction of highways, the state must expend an equal amount of money upon the road. While the states in some cases construct the roads, in other cases they pass the federal allotment on to the counties. It has been stated that the greatest weakness of the system of federal subsidies was the plan followed in several states of matching federal aid only in part from state funds and in part by authorizing counties to vote funds and to determine whether they will accept such aid and the highways they will improve.[51] The result has been in some states a failure to develop a system of connected highways. Secretary of Agriculture Jardine in an address before the American Association of State Highway Officials in November, 1926, pointed out that "complete connection of main arteries is practically impossible so long as there is dependence on county financing."

To meet this situation the national government has insisted that the states have more control over both the work and the financing. In a meeting with the state highway commission of Kansas in June,

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[50] The Chief of the Bureau of Public Roads in his report of September 1, 1928, pointed out that there were twenty-eight states in which over 1000 miles of federal aid roads had been completed; over 2000 miles had been completed in seven states; over 3000 miles had been completed in Minnesota; and over 5000 miles in Texas. The states receiving the largest disbursements of money during that year were Illinois, Iowa, Kansas, New York, Pennsylvania, and Texas.

[51] Austin F. MacDonald, *Federal Aid* (1928), ch. 5.

1928, Secretary Jardine stated that no allotments of federal aid would be granted to that state until it had satisfied the bureau of roads in the department of agriculture that the state actually had the money and the control over roads required by the federal aid act. The Secretary of Agriculture stated that the funds and the construction must be under the control of the highway commission so that the program of roads cannot be delayed or postponed by reason of any county refusing to coöperate. He informed the commission that "the state funds for the construction and maintenance of roads must be under the direct control of the highway commission. The construction work and the contracts must be all under your control."[52]

Whether it is federal aid money that is being passed on to the counties or state aid money that is being granted to them, the work and financing should be under the direct control of the state highway commission. This will tend to secure the development of a state system of highways which will form a connecting chain between the cities of the state. Unless there is this control the construction program of one county may be carried on without giving adequate consideration to the program of adjoining counties. State supervision and control in the expenditure of such money will also insure certain standards of administration in the construction and maintenance of highways.

STATE SUPERVISION AND CONTROL

The system of state and federal aid for the construction of highways reflects a centralizing tendency as to this function. Just as it was found to be unsatisfactory to have detached administration of the township or district roads without any consideration of the highway system of the county as a whole, the same has been found to be true of the state. With the development of motor transportation, the need for a more unified plan of highway administration for the county and for the state as a whole has been recognized.

A number of states have established a system of state highways which are under the complete jurisdiction of the state government.[53] The highways are selected with a view to developing a system of state trunk or arterial highways. But an increased degree of supervision is also being exercised by the states over the counties in the construction and maintenance of highways which have been left under their control. This is done through state highway commissions, state departments of public works, state highway engineers, or other similar administrative authorities.

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[52] *Kansas City Star*, June 20, 1926.

[53] The increased activity of states in constructing highways is shown by a chart published by the Virginia Legislative Reference Bureau in 1921 showing the state bonds for highways and bridges, authorized, voted or issued, 1906-1921.

There has been a marked development of such administrative agencies in the states since 1900. The federal aid plan has acted as a stimulus to the creation of such agencies. Sixteen states had no such department in 1916, road construction and maintenance being left in the control of local authorities. While the subsidy law of 1916 authorized the Secretary of Agriculture to coöperate with state highway departments, they were largely nominal in several states and provided an inadequate organization. The Highways Act of 1921 strengthened the bureau of public roads in its attempt to secure more adequate state departments by defining a state highway department as one "having adequate powers and suitably equipped and organized to discharge to the satisfaction of the Secretary of Agriculture the duties herein required."[54] The federal aid system has not only promoted the establishment of state highway departments, but, as has been pointed out above, it has tended to strengthen and develop state control over local highway administration.

Some consideration will be given to the various types of state control and supervision over the local authorities. Several states provide for advice and assistance by the state agencies to the local authorities in highway matters. The state road commission of West Virginia may be consulted by any county or magisterial district concerning roads and bridges over which they have jurisdiction. The law provides that, when requested, they shall advise and give information to such officers relative to the construction, repair, alteration, and maintenance of roads and bridges.[55] The state highway department of Texas may be consulted by county and city officials for information or assistance. Upon request of the commissioners court of any county, the state department must advise concerning general plans and specifications for all road construction to be undertaken from the proceeds of the sale of bonds.[56]

It is the duty of the state highway engineer in Oregon to act in

[54] 42 *Stat. at Large* 212.

[55] *Barnes W. Va. Code,* 1923, p. 724.

[56] *Vernon's Texas Stat.,* vol. 19, sec. 6667.

an advisory capacity to county courts in the matter of road construction or maintenance. The law provides that upon request of the county court, the state engineer "shall coöperate with the county officials, assist in the matter of road improvement, and furnish specifications for any piece of proposed road improvement in such county upon being furnished the necessary information and data to enable him to prepare such specifications."[57] Such specifications are furnished free of charge to the county. The division of highways of the department of public works in Massachusetts is authorized to compile statistics relative to the public ways of counties, cities, and towns, and to make such investigations relative thereto as it considers expedient. It is further provided that the division may be consulted by, and shall, without charge, advise officers of counties, cities, or towns having the care of and authority over public ways, as to their construction, maintenance, alteration, or repair.[58] Among the other states providing for state assistance to local road officials are Alabama, Florida, Arkansas, and Illinois.[59]

Another means used to give advice and instruction to local road officers in some states is the holding of road schools and road institutes by state officers. In Massachusetts, the division of highways must "give public notice of and hold at least one public meeting annually in each county for the open discussion of questions relative to public ways." The statutes of Michigan provide that the highway commissioners of all townships in the counties of that state and the county highway commissioners in counties working under the county road law, shall, if deemed advisable by the state highway commissioner, meet annually in a road institute.[60] The state road commission in West Virginia may hold an annual school of good roads for the purpose of giving instruction in road building and maintenance to state and county road engineers and to county supervisors and members of the county court.[61] The laws of Arkansas provide that all county judges and county engineers, road commissioners, and road overseers shall attend at least one road institute in each year to be held for the purpose of practical instruction and demonstration. Such institutes are held at such times and places as the commissioner of state lands, highways and improvements may designate.[62] The state highway engineer in Mississippi is authorized to hold road schools for the instruction of county and district road officials when requested to do so by the board of supervisors of any county.[63]

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[57] *Ore. Laws,* 1920, vol. 2, sec. 4434.

[58] *Gen. Laws of Mass.,* 1921, vol. 1, ch. 81.

[59] *Code of Ala.,* 1923, vol. 1, sec. 1312; *ibid.,* sec. 1316; *Digest of Stat. of Ark.,* 1921, sec. 5183; *Rev. Gen. Stat. of Fla.,* 1920, vol. 1, sec. 1197; *Cahill's Ill. Rev. Stat.,* 1923, ch. 121, sec. 3.

[60] *Comp. Laws of Mich.,* 1915, vol. 1, sec. 4380.

[61] *Barnes' W. Va. Code,* 1923, p. 723.

The requirement of reports by local road officials to state authorities is used in some states to secure a greater degree of state supervision and control. At the request of the state highway commissioner in Michigan, local road officials must make an annual report to him, giving such information as he may require relative to roads and bridges.[64] Reports may also be required by state authorities from local road officials in Virginia, Texas, Arkansas, and Oregon.[65] While it is usually provided that such reports be made only upon request, some states, as Missouri, make it the duty of the county highway engineer to make a yearly report upon blanks furnished him, to the state highway engineer.[66]

A more significant type of control over local road administration is that of the selection and removal of the local officials. The state department of public works and buildings in Illinois has been given supervisory control over the selection of county superintendents of highways. The county boards in that state submit to the state department a list of from three to five persons, residents of the county, who are considered desirable candidates for the office of county superintendent of highways. The department then determines by competitive examination the person or persons best fitted for the office and submits this list to the county board. The county board must appoint from the list found eligible. If no one on the list is found eligible by the state department, a further list must be submitted.[67]

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[62] *Digest of Stat. of Ark.*, 1921, sec. 5186.

[63] *Hemingway's Miss. Code*, 1927, vol. 2, sec. 5603. On June 17, 1927, there was organized at a meeting in Washington, D. C., a national county highway officials association, representing the county road officials of the United States. With over three thousand separate governmental units constructing and maintaining highways, such an organization should be of value in securing the adoption of standards of work. 37 *American City* 155 (1927).

[64] *Comp. Laws of Mich.*, 1915, vol. 1, sec. 4381.

[65] *Va. Code of 1924*, sec. 2022; *Vernon's Texas Stat.*, vol. 19, sec. 6667; *Digest of Stat. of Ark.*, 1921, sec. 5185; *Ore. Laws*, 1920, vol. 2, sec. 4434.

[66] *Rev. Stat. of Mo.*, 1919, vol. 3, sec. 10791.

County courts in West Virginia may appoint as county road engineer only a person who holds a certificate of efficiency from the state road commission.[68] In case a county in Michigan draws state reward money for the improvement of any highways, the county highway engineer, who is selected by the county road commissioners, is subject to the approval of the state highway commissioner.[69] Appointments of county engineers by county boards in Kansas are subject to the approval of the state highway commission; county engineers may also be removed by the state commission for incompetency.[70] County engineers in Iowa who are appointed by the county board, may be removed by the state highway commission for incompetency.[71]

Other methods of state control and supervision are used in some states. The state highway commission in Wisconsin may make regulations as to state highways and prospective state highways, and may review the system of prospective state highways selected by the county boards and alter the same so as to connect the systems of adjoining counties into continuous and direct routes. Counties must comply with such regulations as a condition to receiving state aid. The state commission may also take direct charge, upon request of the county board, of the construction and maintenance of state aided highways.[72]

The state highway department of Pennsylvania is also given important supervisory powers over local authorities. The state commissioner is authorized to appoint superintendents of highways who are experienced in the construction and maintenance of improved roads. It is the duty of these superintendents to superintend, supervise, and take charge and control of all work of rebuilding, maintenance, and repair of state-aid and state highways.[73]

The state highway commission of Wyoming is empowered to coöperate with the counties of the state in the construction of county roads. All such coöperative work is performed under the immediate control and supervision of the state commission and the state superintendent. It may not begin such work until the county enters into an agreement to pay not less than one-half the total cost to the state of such work and to pay the entire cost of maintenance. The department of public works in Illinois is authorized to "prescribe a system of auditing and accounting for all road and bridge moneys for the use of all county, township, and district officials." [74]

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[67] *Cahill's Ill. Rev. Stat.*, 1923, ch. 121, sec. 8.

[68] *Barnes' W. Va. Code*, 1923, p. 773.

[69] *Comp. Laws of Mich.*, 1915, vol. 1, sec. 4732.

[70] *Rev. Stat. of Kas.*, 1923, 68–501.

[71] *Code of Ia.*, 1927, sec. 4641.

[72] *Wis. Stat.*, 1923, vol. 1, sec. 82.02.

[73] *Pa. Stat. Complete to 1920*, secs. 19042 ff.

That there is need of greater central supervision of local authorities, if not actual administration by the state, is apparent when we consider the technical matters that are involved in modern highway construction and maintenance. The report of the Special Joint Committee on Taxation and Retrenchment in New York for 1923 stated that "experience has demonstrated the desirability of centralizing in the state government broad powers with respect to highway matters. Even if the counties should be held responsible for the actual execution and maintenance work, there would be advantages in retaining a state control." [75] The New York Bureau of Municipal Research in its report on county government in Virginia, in considering the question of state supervision of county highway administration, stated that such progress as had been made by the counties of that state could be traced "almost entirely to the educational work conducted by the state aid engineer's office, coupled with authority exercised by that official. It is maintained that what is needed is an increase of supervision and control by the state department over county highway matters rather than any curtailment of its present authority." [76]

LIABILITY OF COUNTIES

Another question which arises in connection with county road administration is that of the liability of the county for the condition of its highways. It is the general rule of the courts that counties, being quasi municipal corporations, are not liable for damages on account of defective roads and bridges under their control, unless it is so provided by statute.[77] Cities, on the other hand, are to some degree liable for the condition of their streets. The Supreme Court of Alabama has stated the principle of the liability of counties and cities for the condition of highways and streets as follows: ''Counties are liable as for such defects only when and to the extent that they are made so by statute; while cities or towns are liable as for such defects when not expressly made so by statute. The power and authority which the county exercises in reference to roads and bridges, in its character or nature, is governmental, rather than corporate; and upon principles of the common law a county cannot be made answerable to private individuals for injuries resulting from the failure to exercise the power in the manner most conducive to the public safety. In this respect counties are distinguishable from towns, cities, and other municipal corporations charged with the duty of keeping streets and other highways in a safe and suitable condition for passage.'' [78]

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[74] *Wyo. Comp. Stat.*, 1920, sec. 3030; *Cahill's Ill. Rev. Stat.*, 1923, ch. 121, sec. 3.

[75] *Report of Special Joint Committee on Taxation and Retrenchment in New York*, 1923, p. 183.

[76] *County Government in Virginia*, p. 72.

[77] See John F. Dillon, *Municipal Corporations* (5th ed.), vol. 4, secs. 1687-89; Eugene McQuillin, *Municipal Corporations* (2nd ed.), vol. 7, sec. 2900; B. K. and W. F. Elliott, *A Treatise on the Law of Roads and Streets* (4th ed., 1926), ch. 34.

This distinction is based upon the principle that municipal corporations are created at the request and by the act of the people of the city for their local advantage, while counties are created by the legislature for the purpose of exercising a part of the political power of the state. As pointed out by the Supreme Court of Colorado, ''such municipal subdivisions are usually confined within small, compact territorial limits, and are provided with officers authorized to receive notices, and empowered to act promptly in all contingencies, while counties with us frequently include large areas and embrace within their limits extended regions of sparsely settled territory, making it difficult, if not impossible for them with their inadequate means and limited complement of officers to guard against defects in highways and bridges.'' [79] One authority, in considering the distinction drawn by the courts between the liability of cities and counties, has stated that ''the reason for the distinction between municipal corporations and *quasi*-municipal corporations, in this respect, has never been satisfactorily explained.'' [80] Some states by statute, however, now make counties liable for the condition of their highways.

[78] *City of Montgomery v. Rosso*, 70 So. (Ala.) 634 (1916).

[79] *El Paso County v. Bish*, 33 Pac. (Colo.), 184 (1893).

[80] Eugene McQuillin, *op. cit.*, vol. 7, sec. 2900.

CHAPTER XVIII

REVENUE ADMINISTRATION

FINANCIAL problems play an important part in county administration, as in other fields of public administration. County finances are also a considerable section in the field of public finance, though not of the largest importance. For the country, as a whole, the financial transactions of county government are less than those of the national government or city governments, and about the same as those of the state governments. But the county also, in most states, acts as an agent of the state and other local authorities in the assessment and collection of taxes for their use; and this adds to the importance of the county in matters of public finance.

COUNTY REVENUES

The financial receipts of counties come from the same general sources as other public authorities, but in somewhat different proportions. Much the largest source is the general property tax. Some revenue is also received from special taxes, special assessments, poll taxes, and licenses. Other sources of county revenue are from grants or subventions, fees and other department earnings, interest, fines, and forfeits. Counties also borrow money, on temporary loans or on bond issues; and in this way secure funds which have to be repaid with interest.

A county in levying taxes exercises a power granted by the state legislature and "can act only in conformity with the power so granted." The taxing power of the state rests with the legislature, subject only to constitutional restrictions; the county has no inherent power to tax, but exercises only such power as the legislature has given it.[1]

[1] *People v. Wabash Ry. Co.,* 145 N.E. (Ill.) 642 (1924); *Conecuh County v. Simmons,* 95 So. (Ala.) 488 (1922); *State v. Houston and T. C. Ry. Co.,* 209 S.W. (Texas) 820 (1919); *People v. Wabash Ry. Co.,* 121 N.E. (Ill.) 218 (1918); *People v. St. Louis, A. and T. H. R. Co.,* 133 N.E. (Ill.) 217 (1921); *People v. Chicago and E. I. Ry. Co.,* 145 N.E. (Ill.) 716 (1924); *Oregon Short Line R. Co. v. Gooding County,* 196 Pac. (Idaho) 196 (1921); *Mills v. Commissioners of Conecuh County,* 85 So. (Ala.) 564 (1920); *Sidney Spitzer and Co. v. Monroe County,* 274 Fed. 819 (1921). Also see Thomas M. Cooley, *The Law of Taxation* (4th ed., 1924), vol. 3, chs. 18-21.

In all the states except Rhode Island provision is made for county taxes; assessments and licenses are also authorized. Only such taxes may be imposed as are definitely authorized. In the case of special taxes and licenses not only the kind of tax but usually also the rate of taxation is prescribed. For the general property tax there is, in form at least, some leeway; but a maximum limit of the tax rate is usually prescribed by statute, or in some cases by the state constitution. As many of the county expenditures are also made obligatory by law, there is often little room between the expenditures required and the maximum tax rate.

There are no adequate records of county finances for the United States as a whole. The census reports on Wealth, Debt and Taxation give some information for decennial periods from 1870; but the data has varied from census to census, so that comparisons are difficult, and there is reason to believe that some of the data are not complete. In the last report, for the year 1922, the data on local finances were substantially curtailed, notably in omitting figures for expenditures. Nevertheless some information can be presented from these reports, which can be supplemented from some states which publish reports on county finances.

County taxation in 1870 was reported as $77,746,115, or about two dollars per capita. This was somewhat more than state taxation for the same year, and rather more than half the amount reported for city, town and other local taxes. In 1902, the general property tax for counties amounted to $143,265,385, which was less per capita than in 1870. The county revenue receipts reported for 1902, 1913, and 1922 are shown on the next page.

This shows an increase in county revenue from 1902 to 1913 of about 80 per cent; and from 1913 to 1922 of 142 per cent. In the latter period the corresponding revenues of city governments increased 80 per cent, of state governments 180 per cent, and of the national government 380 per cent. These increases are, however, due in considerable measure to the general increase in prices resulting from the World War; and the increase in county revenues from 1913 to 1922, measured in 1913 dollars, was about 60 per cent.

The increase varied a good deal between different sections of the country; and was largest in the East North Central states and smallest in the far Western states. Wider variations appear between individual states. New Mexico had the largest increase, 335 per cent, or 188 per cent if 1922 revenues are measured in 1912 dollars. Michigan follows, with 308 and 172 per cent; Virginia with 288 and 156 per cent; North Carolina with 266 and 144 per cent; and Minnesota, with 256 and 137 per cent. The smallest increase was in Washington, with 46 per cent, or a decrease of 2 per cent measured in 1913 dollars, followed closely by Montana, Arkansas, New Hampshire and Vermont.[3]

COUNTY RECEIPTS 1902, 1913 AND 1922 [2] (IN THOUSANDS OF DOLLARS)

				Per capita		
	1902	*1913*	*1922*	*1902*	*1913*	*1922*
General property taxes	$143,265	$282,077	$687,286	$1.80	$3.29	$7.07
Special taxes	207	805	4,007		.01	.04
Poll taxes	7,384	5,818	9,127	.09	.07	.09
Licenses and permits	8,988	9,849	25,105	.10	.12	.26
Special assessments, etc.	1,064	9,323	19,475	.01	.11	.20
Totals	$160,909	$307,872	$745,000	$2.00	$3.60	$7.67
Dept. earnings, etc.	16,887	29,142		.21	.33	
Subventions and grants	15,897	23,966		.20	.28	
Interest (and rents)	2,948	5,531		.04	.06	
Fines, forfeits, etc.	2,478	3,532		.03	.04	
Total revenues	$199,119	$370,043		$2.49	$4.32	
Loans	34,547	86,051				
Trust and agency	254,617	425,332				
Investments	4,034	3,383				
Transfers, etc.	5,680	10,858				

The importance of county revenues, as measured by population, also varies in different sections of the country. Per capita county revenues are largest in the Mountain and Pacific states, and smallest in New England; and are larger in the North Central states than in the Southern states.

For the year 1922 the per capita county tax revenues reported for the Mountain and Pacific states ranged from $12.25 in Wyoming to $20.21 in California, outside of the extreme cases of Utah with $6.57 and Nevada with $41.01. In New England, Rhode Island had no county revenue; Vermont had 15 cents per capita, Connecticut 80 cents, while Maine, Massachusetts, and New Hampshire had from $1.36 to $2.43 per capita. The Southern states varied from

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[2] Bureau of Census, *Wealth, Debt and Taxation* (1902), pp. 1022-23; (1913), vol. II, p. 122; (1922), *Taxes Collected*, pp. 12, 148.

[3] H. A. Barth, ''The Trend in County Revenues,'' 113 *Annals of Amer. Acad. of Pol. and Soc. Sci.* 22, 24 (May, 1924).

$3.17 in Arkansas to $8.21 in Tennessee, $12.07 in Florida, and $12.27 in Maryland. The Middle Atlantic states had per capita county revenues from $4.63 in Pennsylvania to $7.55 in New Jersey. In the North Central states Illinois, with per capita county revenues of $3.64 was less than any other state except Arkansas and the New England states; but the other states in this section ranged from $8.13 in Michigan to $12.69 in Ohio.

Later data, compiled from state reports, show the continued increase of county and other local taxes. According to studies made by the National Industrial Conference Board the total of local taxes had risen from 3,157 million dollars in 1922 to 4,372 millions in 1927, an increase of nearly 40 per cent. The most notable increases were: in Florida nearly threefold, and in California, about 70 per cent.[4]

In New York, county taxes on property increased from $30,000,000 in 1922 to $43,600,000 in 1927, and the total county revenues in the latter year amounted to $51,800,000. In Illinois, county taxes increased from $27,000,000 in 1922 to $40,000,000 in 1927. In Ohio, county revenues in 1927 from taxes, special assessments, licenses and fees amounted to $77,000,000, the per capita revenue ranging from a minimum of $8.10 to a maximum of $30.48. In Wisconsin, county property taxes increased from $23,000,000 in 1922 to $28,000,000 in 1927, and the total county revenues in the latter year were $41,885,000. In California, county taxes on property increased from $63,000,000 in 1922 to $99,000,000 in 1927; and the total ordinary revenue of counties for the latter year amounted to $180,000,000.[5]

In Virginia, county taxes increased from $12,000,000 in 1922 to $15,000,000 in 1926; and the total of county receipts for the latter year were $31,000,000. In South Carolina, taxes levied for ordinary purposes increased in the period 1916-26 a total of 158.2 per cent. In some counties the increase was unusually large,—one county showing an increase in taxes for ordinary purposes from $48,785 to $331,451 or 597.2 per cent. Eleven counties showed an increase of over 200 per cent, and twenty counties of over 100 per cent. Of the forty-six counties in the state, only one showed a decrease,—that being 25.9 per cent. The total property tax levied in South Carolina for all county purposes increased in the period 1915-26 from $2,173,411 to $8,048,967, or 270 per cent; the increase for special county purposes was 616 per cent; and for public roads 331 per cent.[6]

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[4] *Cost of Government in the United States,* 1925-26, p. 94; *ibid.,* 1926-27, p. 74.

[5] N. Y. State Comptroller, *Special Reports on Municipal Accounts;* Auditor of Public Accounts, Illinois, *Reports; Comparative Statistics, Counties of Ohio,* 1927; Wisconsin Tax Commission, *Reports;* California, *Annual Report on Financial Transactions of Counties and Municipalities for 1928.*

SOURCES OF COUNTY REVENUE

Much the most important source of county revenue is the general property tax. In 1902 this yielded 70 per cent of the total revenue reported, and in 1913 this had increased to 76 per cent. This may, however, overstate the case, as there is some reason to believe that the census reports of fees and other earnings of county offices may be incomplete. In any case, of the *tax* revenues, as reported, the general property tax yielded 90 per cent and more for each of the census years.

Minor sources of tax revenue are: from licenses and permits 3.4 per cent in 1922; special assessments 2.6 per cent; poll taxes 1.2 per cent; and special taxes 0.5 per cent.

The licensing power is a developing source of county revenue in some states. The things licensed and the amounts derived from this tax show great variation, but some cases of its use may be noted. Licenses are required to sell cigarettes in Utah; for territory outside of any city or town the licenses are granted by the board of county commissioners and a fee of ten dollars charged.[7] Kansas also levies a license tax for the right to sell cigarettes.[8] Arkansas levies several privilege taxes for the benefit of the county. Peddlers must pay a county licenses fee of twenty-five dollars; a circus or menagerie a fee of one hundred dollars a day; auctioneers ten dollars per day; foreign horse traders and piano peddlers one hundred dollars.[9] A license tax of seventy-five dollars is charged to non-residents of the state of Florida who engage in the business of selling automobiles at retail. Fifty dollars of this goes to the state and twenty-five dollars is retained by the county. Drovers and horse traders selling at auction mules or other live stock must pay a license tax of five hundred dollars in each county in which they engage in such business.[10]

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[6] *Comparative Cost of Local Government in Virginia, 1925-26*, pp. 15, 26 (Richmond, 1927); *University Weekly News*, University of South Carolina, March 16, 1927.

[7] *Laws of Utah*, 1925, ch. 68.

[8] *Laws of Kas.*, 1927, chs. 171, 172, 173.

[9] *Digest of Stat. of Ark.*, 1921, secs. 9831-39.

License revenue is of most importance to counties in Idaho, Kansas, Michigan, Nebraska and Wyoming, where from 9 to 12 per cent of the county tax revenue came from licenses in 1922. In most of the other states the yield from this source is small.

Special assessments have been of most importance as a source of county revenue in Iowa and Minnesota, where they produced about 15 per cent of the county tax revenue in 1922. They are of some importance in Ohio, Michigan and North Dakota; and to a smaller degree in Indiana and Kansas.

Poll taxes are of declining importance. In half of the states there was no county revenue from this source reported for 1922. The states reporting the largest per capita returns were Washington and Nevada.

Subsidies or grants from the state are another considerable source of county revenue. Since the county acts as an agent of the state and as an administrative district of the state, it is proper that the state bear a part of the expense of the county in performing such functions. It is also a means by which the state may insure a minimum standard on the part of the county in carrying out state policies and programs. This policy of granting state aid to counties has developed especially in the fields of school and highway administration.

Closely connected with the granting of state subsidies to counties is the division of certain state taxes with the counties. State automobile license and state gasoline taxes are now in some states divided and a part reapportioned to the counties. Some of the states which use the income and inheritance tax also apportion a part of these to the counties.

Fees and other department earnings form another considerable source of income in counties. For the years 1902 and 1912, the census reports show about eight per cent of the total revenue from this source. Such fees are often retained by the county officers and used for the payment of the expenses of their office, and may not be included in the reports of county revenues. Some revenue is also received from interest and fines,—amounting to about 2½ per cent of the total revenues in 1902 and 1912. The census reports for 1922 give no data as to county revenues from fees, subventions, interest or fines.

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[10] *Fla. Cum. Stat.*, 1925, secs. 809, 878. Also see *Gen. Acts. Ala.*, 1915, pp. 489, 527.

The combined revenue from these minor sources is probably about 25 per cent of the total county revenue, as it was in 1912; and as noted above, in 1922 counties were still deriving over 90 per cent of their *tax* revenue from the general property tax.

In addition to the various sources of revenue for current purposes, counties make a large and increasing use of the power to borrow money, by the issue of bonds or for temporary purposes. The amount of county loans, as reported to the census bureau, aggregated $34,547,000 in 1902 and $86,051,000 in 1912. According to the studies of the National Industrial Conference Board, county bond issues in 1923 amounted to $170,487,000, and in 1927 had increased to $287,131,000, the total issues for the five years aggregating $1,098,272,000.[11]

Over and above the revenue and loans for county purposes, the county finance officers handle even larger sums for other governmental agencies and as private trust funds. Taxes for the state and other local authorities are collected or received by the county treasurers, and also grants or subventions from the state to other local authorities. The amount of such trust and agency receipts by counties aggregated $254,000,000 in 1902 and $425,000,000 in 1912.

THE GENERAL PROPERTY TAX

In view of the importance of the general property tax as a source of revenue for counties, for other local goverments, and for state purposes, special attention may be given to the methods of administration for this tax.

Professor Seligman has stated that, as actually administered, the general property tax is ''one of the worst taxes known to the civilized world.'' It has also been referred to as a school of perjury, and as a system which has demoralizing and corrupting influences which debauch the moral sense.[12]

The first step in the administration of the general property tax is the assessment of the property. While personal property is usually assessed annually, real property is usually listed only every two, three, or four years.[13] The methods of assessing property have not been satisfactory; this has been especially true of those states using the town or township method of assessment.[14] The president of the New York state tax department, in considering the question of the assessment of property in 1916, stated that "comparative studies of the two methods show that the town plan possesses all the disadvantages of the small unit for tax administration while the county plan permits of an efficiency in administration in every direction, which can only be achieved through the use of the larger unit of jurisdiction." [15] Under the township plan there is an under assessment of property so that the assessor will not incur the ill will of his neighbors who elect him; they desire a low assessment in order to reduce their share of the burden of state and county taxes.

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[11] Census reports on *Wealth, Debt and Taxation*, 1902, 1912; *Cost of Government in the United States*, 1926-27, p. 44.

[12] E. R. A. Seligman, *Essays in Taxation*, p. 62; M. H. Hunter, *Outlines of Public Finance* (1921), p. 253. Also see Carl C. Plehn, *Introduction to Public Finance* (5th ed.), 1926, pp. 163-92; *County Government and County Affairs in North Carolina*, p. 53.

If the general property tax is to be retained the county should replace the township or the district as the unit of administration. The methods of assessment used in Ohio and Kansas furnish what appear to be suitable arrangements for the assessment of property. In Kansas the county assessor is elected; the actual assessment is made by deputy assessors who are appointed by the county assessor, by and with the consent of the board of county commissioners.[16] The county is also used as the unit for the assessment of property in Ohio, the auditor being the county assessor. The auditor is empowered to appoint and employ such experts, deputies, and clerks or other employees as may be necessary to the performance of his duties as assessor.[17]

Some degree of supervisory control is vested in the county authorities in states which continue to use the town as the unit of assessment. Thus in Iowa the county auditor must annually call a meeting of all the assessors of the county "for consultation and to receive from such auditor such information as shall tend to the proper discharge by them of their official duties." [18] Similar plans of county supervision are found in other states.

[13] Jens P. Jensen, *Problems of Public Finance* (1924), p. 238.

[14] See Chapters XX and XXI.

[15] Martin Saxe, "A Plea for the County Plan of Tax Administration in New York," *Proceedings of the Second Conference for Better County Government in New York State*, 1916, pp. 16-24.

[16] *Rev. Stat. of Kas.*, 1923, sec. 79–1411.

[17] *Page's Ohio Gen. Code*, vol. 1, sec. 5367.

[18] *Code of Iowa*, 1927, sec. 7114.

While the use of the county rather than the township or other district smaller than the county should improve tax administration, this will not remove all the difficulties of the general property tax. The method of electing assessors, which is used in practically all cases, is not conducive to selecting men who are best qualified to serve in this capacity. Their duties require a knowledge of the value of real estate, and of personal property, tangible and intangible. Too often it is true that the assessor "is usually a good fellow, possessed of more affability than the other kinds of ability required for the job." [19] Local assessment of personal property in many cases becomes self-assessment by the owner. The more honest and conscientious citizen places a fair valuation upon his property, while the less conscientious undervalues his property. Arizona attempts to secure a fair valuation of property by providing that the assessor and his sureties are liable for taxes on taxable property within the county, when, through the neglect of the assessor, it remains unassessed.[20]

Many intangibles are not taxed at all and the tangibles are thus penalized by high taxes in order to meet the necessary expenditures.[21] If securities and money are taxed at par, while tangibles are reported at less than actual value, this means a high rate on intangibles that do report; the result has been that many intangibles fail to report and escape taxation entirely. It has been stated that "there can be little doubt that over 50 per cent of all property, including real estate, is not listed and therefore not taxed." [22] While there is in some cases revision by a county board of review or equalization, this is far from a complete remedy.

One method of improving the situation is the classification of property for purposes of taxation. The legislatures of over thirty states, by express or implied grants of power, now classify property for taxation.[23] Acting under such authority several states by classification tax intangibles at a different rate from real estate. Some states now have a recording tax for mortgages, in lieu of their taxation as property. Pennsylvania reduced the rate of taxation on intangibles, and a greater revenue was received. Connecticut has a law providing for the voluntary registration of certain forms of intangible property with the state treasurer. A small tax is paid upon such registered intangibles each year. If so registered, they are exempt from all other taxes; if not so registered they are subject to be taxed at the regular rates which are much higher than the state registration rate.[24]

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[19] Martin Saxe, *op. cit.*, pp. 17-18.

[20] *Rev. Stat. of Ariz.*, 1913, sec. 4873.

[21] Charles Lee Raper, "The County Tax List and Its Equalization," *County Government and County Affairs in North Carolina*, pp. 49-59.

[22] Jensen, *op. cit.*, p. 241.

[23] Ogg and Ray, *op. cit.* (3rd ed.), p. 782.

Even for real estate, with rapid changes in value, and the incentives to undervaluation, it seems almost impossible to secure adequate and equitable assessments by locally elected assessors. Some improvement may be brought about by preparing maps showing the location of various pieces of land and the kind of soil, so that comparisons can be made of assessments on similar property. County commissioners in Ohio may, if they deem it "necessary to the proper appraisal of the real estate of such county," each fourth year advertise for sealed proposals to construct the necessary maps and plats to enable the assessors to reappraise all real estate.[25] In Arizona the assessor must have prepared tax maps for the county. This is paid for by the county out of county funds.[26] Further provision should be made in other states for tax maps to aid assessors in their work.

Some states have tried the plan of using "tax ferrets" to uncover property which would otherwise escape taxation. In Oklahoma, county commissioners may contract with any person or persons to assist the proper officers of the county in the discovery of property not listed and assessed, as required by law, and fix their compensation at not to exceed 15 per cent of the taxes recovered.[27] The county board of tax assessors in Georgia may employ an agent to seek out all unreturned property in the county and bring it to the attention of the board. For such services they may allow such agent a commission of 10 per cent of the amount of the tax derived from such unreported property.[28] Iowa and Ohio tried a system of tax ferrets, but the results were not satisfactory, and the system has been abolished in these states.[29]

[24] Hunter, *op. cit.*, p. 266; Jensen, *op. cit.*, p. 273; *Ill. Const. Conv. Bull.*, 1920, p. 250.

[25] *Page's Ohio Gen. Code,* vol. 1, sec. 5549.

[26] *Rev. Stat. of Ariz.*, 1913, sec. 4876.

[27] *Comp. Okla. Stat.*, 1921, vol. 2, sec. 9798. *Scott v. Board of Commissioners of Muskogee County,* 227 Pac. (Okla.) 448 (1924).

[28] *Parks Code of Georgia* (1914), vol. 1, sec. 1116 (5). Also see *Decatur County v. Roberts,* 126 S.E. (Ga.) 460 (1925).

[29] Hunter, *op. cit.*, p. 263; Jensen, *op. cit.*, p. 257.

In Kentucky the state tax commission may appoint a revenue agent in each county of the state, and not exceeding four revenue agents from the state at large. It is their duty to cause to be listed for taxation, property which has been omitted. All persons who own property so assessed must pay a penalty of 20 per cent, and of this amount 75 per cent goes to the officer causing the property to be assessed.[30]

Some county boards have attempted to employ tax ferrets without express statutory authorization. The Supreme Court of Colorado has held that a county board has no implied power to make a contract employing a person to discover and report property omitted from taxation.[31] A similar view has been taken by the Supreme Court of Minnesota; ''Counties of this state are quasi municipal corporations, and it is elementary that they can exercise only such powers as are expressly granted them by the legislature, or such as are fairly implied as necessary to the exercise of powers expressly granted.'' The court held that the power of taxation belonged exclusively to the state and that: ''The matter of unearthing and discovering property which has escaped taxation is not only not necessary to the exercise of the corporate powers of a county, but is beyond its express or implied authority.''[32] A similar view has been taken by the supreme courts of North Dakota and New Mexico.[33]

Another method used to secure the listing of property is by providing a penalty for property which is not reported. A Kentucky law illustrates this method. In that state when money in hand, notes, bonds, accounts, or other credits, secured or unsecured, or shares of stock which are liable to assessment are omitted from assessment in any year, they may at any time, not later than ten years thereafter, be assessed retrospectively. In case they are so reassessed a penalty of 100 per cent of the amount of the taxes and interest at 6 per cent must be paid.[34]

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[30] *Carroll's Ky. Stat.*, 1922, secs. 4257-60.

[31] *Chase v. Board of Commissioners of Boulder County*, 86 Pac. (Colo.) 1011 (1906).

[32] *Grannis v. Board of Commissioners of Blue Earth County*, 83 N.W. (Minn.) 495 (1900).

[33] *Murphy v. Swanson*, 198 N.W. (N. D.) 116 (1924); *Fancher v. Board of Commissioners of Grant County*, 210 Pac. (N. M.) 237 (1922).

[34] *Kentucky Statute Service*, 1926, sec. 4019a-12.

LOCAL BOARDS OF EQUALIZATION OR REVIEW

To meet some of the defects of assessment which have been discussed above, provision is made in many states for local boards of review or boards of equalization. Only a few states have township boards of review, but county boards of review are found in most states.[35] A few states have neither local nor state boards of review; some have local but not state; some have both state and local; while some provide for triple review, township, county, and state.[36] Local boards of review will be considered here, and state supervision will be examined later.

The purpose of the board of review or equalization is to review the assessment as reported by the local officers and to equalize assessments as between individuals or local assessment districts and taxing units. The township board of review is of little significance, only six states in 1915, having such boards. The county board of review, however, has a more important place in our system of tax administration. The composition of county boards of review shows variation in the states. They are often composed of or include certain county officers who serve ex officio. In Ohio, they are composed of the county treasurer, county auditor, and the president of the board of county commissioners.[37] In Indiana, they include the county assessor, county auditor, county treasurer, and two freeholders of opposite political parties who are appointed by the judge of the circuit court.[38] In most Illinois counties they are composed of the chairman of the county board and two members appointed by the county judge.

The county board of review has in many cases functioned more as a court than as an administrative body. It does not carry on investigations on its own initiative to determine whether there has been a just and fair assessment of property. More often it considers only cases of unfair assessment brought before it; and in practice, the cases called to its attention are those where a property owner feels that too high a valuation has been placed upon his property. It has not proved to be an effective means of reaching property which fails to report or is under assessed. One writer in considering the county board of review has said: "Local politics and conditions, combined with personal favoritism, have had so much influence, in general, that the accomplishments have not been what justice would demand." [39] This is a fair estimate of the work of the local board of equalization.

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[35] In 1915 only six states had township boards of review; all states except nine had county boards of review at that time. *Report of Illinois Efficiency and Economy Committee*, 1915, p. 154.

[36] Jensen, *op. cit.*, p. 244.

[37] *Page's Ohio Gen. Code*, vol. 1, sec. 5580.

[38] *Burns' Ind. Stat.*, 1926, vol. 3, sec. 14204.

Not only is there this inequality of assessment between individual property owners, but there is inequality of assessment between counties. Since the same valuation is used as a basis for state as for county taxation, by keeping down the valuation within the county, when the state tax rate is applied to this valuation, a smaller amount will be exacted. The county may secure its needed revenue by increasing the county tax rate; thus undervaluation is a state as well as a county problem.

In a study made by the special tax commission of Kentucky in 1915, one county was found to have an assessed valuation of less than thirty per cent of true valuation, while four counties had an assessed valuation of over 75 per cent.[40] In West Virginia, it was found a few years ago that property was assessed in some localities at approximately 23 per cent of its real value and in others at 87 per cent. In Indiana, the assessed valuation varied from 25 per cent of true value in some counties to over 75 per cent in others.[41] Similar conditions have been found to exist in other states.

A proposed remedy for this difficulty is to separate state and local sources of revenue.[42] If the state relies upon taxes other than the general property tax and leaves the latter entirely to the local government, the problem of under assessment and inequality of assessments between counties would be largely eliminated. Since no state tax would be collected on this valuation, there would be no incentive or advantage for a county to secure an undervaluation since it would not longer reduce the total tax burden but merely change the tax rate.[43] Some states have largely separated the sources of state and local revenue. The principal sources of state revenue are taxes on banks, insurance companies, public service corporations, inheritances, and incomes.[44] California has provided for a corporation franchise tax. Delaware and Pennsylvania also rely chiefly upon this source for state revenues. Minnesota derives state revenue from a tax on the gross earnings of railroads and a tonnage tax on iron ore.[45] Among the states which make little or no use of the general property tax for state purposes are Delaware, California, New York, North Carolina, Ohio, Pennsylvania, and Wisconsin.[46]

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[39] Hunter, *op. cit.*, p. 260.

[40] Jensen, *op. cit.*, p. 254

[41] Schuyler Wallace, *State Administrative Supervision over Cities in the United States*, ch. 3.

[42] J. E. Boyle, "A Program for Redistributing Sources of Revenue as Between Cities, States, and National Government," 95 *Annals of Amer. Acad. of Pol. and Soc. Sci.* 272-76 (1921); T. S. Adams, "Separation of State and Local Revenues," 58 *Annals of Amer. Acad. of Pol. and Soc. Sci.* 135, 136 (1915); Charles J. Bullock, *Selected Readings in Public Finance* (1920), pp. 445-460.

Several states use other sources of revenue to a considerable extent; but also continue the general property tax for a substantial proportion of state revenue. Complete separation of state and local revenues is less actively urged in recent years. The problem of adjusting the burden of taxation remains, and state supervision of local assessments seems desirable even where the state does not use the general property tax for state revenue.

The inheritance and income tax are newer developments in the field of state taxation. By 1922, inheritance taxes were collected in all states except Alabama and Florida. In thirty-seven states all of the revenue derived from this tax goes to the state; and in one state, Nebraska, all of the receipts go to the county. The state shares the inheritance tax with the county in five states,—Kansas, Minnesota, North Dakota, South Dakota, and Wisconsin; and in Montana, Ohio, and Virginia, the state shares the inheritance tax with specified civil divisions and incorporated places.[47] Twenty states now levy an income tax.[48] Most of these use all of the revenue for state purposes; Massachusetts, New Hampshire, New York, and Wisconsin give a part of the proceeds to the local governmental units.[49]

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[43] Hunter, *op. cit.*, pp. 269-272.

[44] M. Newcomer, "Separation of State and Local Revenues in the United States," 76 *Columbia Univ. Studies* (1917).

[45] Jensen, *op. cit.*, pp. 269-270.

[46] Ogg and Ray, *op. cit.* (3rd ed.), p. 779.

[47] Bureau of Census, *Wealth, Debt and Taxation*, 1922, p. 10.

[48] Arkansas, California, Connecticut, Delaware, Georgia, Maryland, Massachusetts, Mississippi, Missouri, Montana, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, West Virginia, and Wisconsin.

[49] National Industrial Conference Board, *State Income Taxes* (1930).

STATE SUPERVISION AND CONTROL

To meet the obvious inequalities and defects of the completely decentralized methods of local assessment, some steps in the direction of state action were tried from an early period, and during the last thirty years there have been important developments in many states in state administrative supervision and also in direct state assessment of some classes of property.

As early as 1825 a state board of equalization was established in Ohio, with power to readjust the aggregate assessed valuation of counties so as to equalize the distribution of the state tax. Such boards were established in most of the states; but for many years their organization and methods were entirely inadequate. In a number of states they were composed of ex officio members, with other duties which made it impossible for them to give much attention to the review of assessments. In several states the boards were composed of a considerable number of members elected by districts, as in Illinois, where such a board continued until 1919, composed of one member elected from each of the twenty-five congressional districts and the auditor of public accounts, which was in session only a small portion of the year. Under these circumstances equalization was at best a matter of guesswork, and in many cases became a log-rolling process.

With the later development of permanent tax commissions with a regular staff, the older type of boards of equalization have either been displaced, or their work is at least aided and to some extent improved by the tax department. Thus in Nebraska the state board of equalization consists of the governor as chairman, the tax commissioner as secretary, the secretary of state, auditor of public accounts and state treasurer.[50]

Equalization, however, is merely an attempt to right a wrong which has been done or, as one writer expressed it, it is shutting the barn door after the horse has escaped.[51] Efforts should be directed to the improvement in the original assessment so that less reliance need be placed upon equalization. Equalization should be considered a means of remedying inequalities in assessment which cannot otherwise be prevented; but it is not a satisfactory remedy for inadequate, unjust, and unequal original assessments.

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[50] Nebraska Legislative Reference Bureau, *Nebraska Taxpayers' Handbook* (1928).

[51] J. M. Mathews, *American State Government*, p. 311.

Recent efforts in the field of taxation have been directed more to the original assessment than to equalization.

More effective supervision over local assessments was begun in Indiana, by the establishment in 1891 of a state tax commission, with two salaried members in addition to the ex officio members of the state board of equalization. This commission was given power to prescribe forms of books and blanks used in the assessment and collection of taxes, to construe the tax and revenue laws of the state and give instructions to local officials, to see that all assessments of property were made according to law, and to visit each county in the state to hear complaints, collect information and secure compliance with the law.

State tax commissions with similar powers were established in New York in 1896, in Michigan and Wisconsin in 1899, and since then in other states, and are now in operation in more than forty states. In most states there is a small commission of three or five members; but in some states, as Massachusetts, West Virginia, and Nebraska there is a single tax commissioner. A staff of experts and assistants are regularly provided.

The powers and activities of the state tax authorities show wide variations. In half a dozen states (Delaware, Florida, North Dakota, Pennsylvania, Rhode Island, Tennessee, and Texas), there is practically no control over local assessments. In some nine states (California, Connecticut, Georgia; Idaho, Iowa, Kentucky, Maine, Oklahoma, and Oregon) the state agencies have only or mainly power to equalize or adjust the total valuations of local taxing districts or different classes of property. In some of these states, however, there is state assessment or special state taxes on some classes of property. In the remaining thirty-two states, there are more or less effective powers of supervision over local assessments.[52]

Some indication of the general scope of powers conferred on such state tax commissions may be given by noting provisions in laws of several states.

It is the duty of the state tax commission of Alabama to "exercise general and complete supervision and control" of the valuation, equalization, and assessment of property in that state. The commission has power to confer with, advise and direct county tax assessors, collectors, and other county officials charged with the assessment and collection of taxes as to their duties under the laws of the state. It is the duty of the commission to visit, personally or by authorized agents, the counties of the state for the purpose of investigating the works and methods of county tax assessors, or other officers or boards charged with the duty of administering the tax laws of the state.[53]

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[52] Schuyler C. Wallace, *State Administrative Supervision over Cities in the United States*, ch. 3. Cf. H. L. Lutz, *State Tax Commissions* (Boston, 1918).

One of the members of the state tax commission in Arkansas, in the exercise of their powers of supervision, must officially visit at least one-half of the counties of the state annually, and every county in the state at least once in two years, and ''inquire into the methods of assessment and taxation and ascertain whether the assessors faithfully discharge their duties.''[54]

The tax commission of Kansas must provide a uniform method of keeping the tax rolls and books relating to taxation in each county of the state and formulate and send to the proper officer in each county all necessary forms to be used in the listing, assessment, return of property, and collection of taxes. The tax commissioners, or one of them, must from time to time, visit each county in the state ''for the purpose of requiring the proper assessment and return of property, a uniform value thereof, and the use of forms and a system of keeping accounts provided by law or by the commission.'' The commission has ''general supervision and direction of the county assessors in the performance of their duties.''[55]

The tax commissioner in North Dakota, who is appointed by the governor and senate for a six-year term, has been given extensive powers of supervision over county assessments. The law provides that he ''exercise general supervision over all assessors of general property or other taxes, of town, county, and city boards of review and equalization, and all other assessing officers in the performance of their duties, to the end that all assessment of property be made relatively just and equal in compliance with the laws of the state.'' He appoints within each county, subject to the approval of the board of county commissioners, a supervisor of tax assessments, who also acts as assessor of income taxes within the county. He confers and advises with, and gives instructions and directions to county supervisors of assessors as to their duties under the laws of the state. This includes the calling of meetings of local assessors of each county to be held at the county seat of each county, "for the purpose of receiving necessary instructions from the supervisor, relative to the duties of their office and to the laws governing the assessment and taxation of all classes of property and other subjects or objects of taxation." It is the duty of the tax commissioner to visit, "either personally or by deputy or other authorized agent, the several counties of the state, as often as practicable or needful for the investigation of the work and methods adopted by the county supervisor of assessment, local assessors, county, and district boards of equalization and other tax officials." Each year he must call a meeting of all county supervisors of assessment and assessors of income or other state taxes, other than general property taxes, to meet at his office at the state capital. He also has authority to cause a reassessment of property to be made in any assessment district.[56]

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[53] *Gen. Acts of Ala.*, 1923, pp. 185-88.

[54] *Digest of Stat. of Ark.*, 1921, sec. 9788.

[55] *Rev. Stat. of Kas.*, 1923, sec. 79-1401.

Similar powers of supervision are conferred upon the state authorities in other states. The state tax commission of Arizona formulates and sends to the proper county officers all necessary forms to be used in listing and valuing property, assessing, the return of the property, and the collection of the taxes. The commission has "general supervision and direction over the county assessors and county boards of equalization in the performance of their duties." The commission, or a quorum thereof, must from time to time visit each county in the state for the purpose of ascertaining the proper assessment and return of property, a uniform value thereof, and the use of forms and systems of keeping accounts provided by law or by the commission.[57]

The state tax commission of New Mexico has general supervision over the administration of the assessment and taxing laws of the state. It must confer with, assist, advise, and direct the assessors, county boards of equalization, and all officers having power of levy, assessment, and equalization, as to their duties under the law, and for this purpose, hold conferences at its office or elsewhere in the state.[58]

The tax commission of Ohio is authorized to "direct and supervise the assessment for taxation of all real and personal property in the state." The board of state assessors of Maine also have general supervision over the administration of the assessment and taxation laws of the state, and over local assessing officers.[59]

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[56] *Supp. to Comp. Laws N. D.*, 1923-25, secs. 2092a1-6.

[57] *Rev. Stat. of Ariz.*, 1913, sec. 4826.

[58] *Laws of N. M.*, 1921, p. 291.

The means and methods of supervision include: the collection of information by reports, and by visits and inspection of local offices; advising local officials by correspondence, publications, visitation and conferences; central approval in a few cases, the power of review, the power to issue rules, instructions and orders, as for reassessments; and in some states powers of removal and appointment of local officials.

Information is a necessary basis for the exercise of any supervisory control; and reports as to some matters are generally required. In some states only certain specified data may be demanded; but in others the state authority has larger discretionary power. In Ohio, all fiscal transactions must be reported in accordance with forms prescribed by the chief inspector and supervisor.

Systematic inspections by agents of the state authorities have been made in a number of states, as to the methods of local officers, the discovery of property omitted from the assessment lists, and the examination of sales and other data as to the value of property. A striking illustration of the need for such inspections and its value in adding to the property assessed may be seen in Louisiana, where inspections were maintained for a time, abandoned in 1907, and reëstablished in 1917. During the decade when no inspections were made the total assessments of real estate increased slightly while for some classes of property there was a notable decline. When inspection was renewed, there were large additions of property not assessed and the total valuations more than doubled.[60]

Conferences of assessing officers are required in about half of the states, and are also held in other states at occasional intervals. The object is to aid, assist, and instruct the local officers. For example, the state tax commission of Arizona must, at least once in each year, require the assessors of the state to meet in a state conference with the commission "for the purpose of considering matters relating to taxation, to secure a uniform valuation of classes of property throughout the state, and to discuss and formulate any changes deemed necessary or advisable in the laws relating to taxation or the forms or methods of keeping the books and accounts thereof." In Kansas, the state tax commission must, at least once in two years, require the county assessors of the state to meet at the state capitol "for the purpose of considering matters relating to taxation, to secure a uniform valuation throughout the state, and to discuss and formulate any needed changes in the laws relating to taxation or the forms or methods of keeping the books and accounts thereof."

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[59] *Page's Ohio Gen. Code,* vol. 1, sec. 5579; *Rev. Stat. of Me.,* 1916, ch. 9, sec. 5.

[60] Schuyler Wallace, *op. cit.,* p. 69.

In Georgia, twenty-two local conferences were held in 1922. In Missouri, there is a state conference, with general sessions and also sectional sessions of local groups. In Colorado, the state conferences are reported to be useful for newly elected officials. Other states where such conferences are provided for include Alabama, Connecticut, Illinois, Indiana, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Montana, New Hampshire, New York, Ohio, South Carolina, South Dakota, Vermont, Virginia, Washington, West Virginia, and Washington.[61]

A further extension of state control over assessments is provided in a few states by the power to appoint and remove local assessing officers. In New York, and Wisconsin, income tax assessors are appointed by the state tax commissions for districts into which these states are divided.[62] In Maryland, a supervisor of taxes for each county is appointed by the tax commission from a list of five names submitted by the county commissioners; and in South Carolina, the county auditor, who is the chief supervising assessment official is appointed by the governor on the recommendation of members of the general assembly from the respective counties. In West Virginia, the board of public works is authorized to select all local boards of review.[63] In Louisiana, the parish board of equalization is composed of two members chosen by the police jury and one by a state board. Ohio in 1913 divided the state into assessment districts with assessors appointed by the governor, but this act was repealed in 1915 and the plan of local selection was revived.[64]

A limited power of removal of local assessing officers is vested in state authorities in some states. In Maryland, this is provided for supervisors of assessments, in South Carolina for county auditors, and in Vermont for boards of appraisors in appeal cases. In Minnesota, the governor may remove any financial official guilty of malfeasance. The state tax commission in Indiana may remove a county assessor for incompetency, neglect of duty, or misconduct in office. Assessors in Nebraska may be removed by the state board of equalization and assessment for willfully neglecting to obey any of the provisions of law or rules, regulations, or instructions of the board.[65] In Colorado, assessors may be removed by the governor for willfully refusing to assess property or for willfully assessing property at less than its true value.

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[61] Schuyler Wallace, *op. cit.*, p. 73; *Rev. Stat. of Ariz.*, 1913, sec. 4826; *Rev. Stat. of Kas.*, 1923, sec. 79-1401; *Barnes' W. Va. Code*, 1923, ch. 29, sec. 17; *Burns' Ind. Stat.*, 1926, vol. 3, sec. 14203; *Remington's Comp. Stat. of Wash.*, 1922, vol. 3, sec. 11090.

[62] J. M. Mathews, *American State Government*, p. 324; Ogg and Ray, *op. cit.*, p. 789.

[63] Schuyler Wallace, *op. cit.*, p. 88.

[64] *Acts of Louisiana*, 1920, Act 231; *Laws of Ohio*, 1913, p. 786; 1914-15, p. 246.

One writer has suggested that state control "should be sufficient to permit the commission to prepare the land classification, supervise the collection of data for valuation, issue detailed instructions as to the manner of appraisal, review and equalize the results, and order reassessments when this procedure is found necessary." [66] It is also suggested that there should be vested in the central authorities, power to remove local assessors, "if the best interests of the assessment appear to require such action."

A more positive method of control over local assessments which has been authorized in more than half of the states is the power to order a reassessment of property in a particular county or local district.[67] The cost of a reassessment is usually borne by the local authorities. In some states the reassessment is made by the local officials, as in Ohio by the county auditor, and in Illinois by town assessors and county boards of review. But in other states the reassessment is made by officers appointed by the state tax commissioner, as in Minnesota, Kansas, and South Dakota.[68] In Kansas, the tax commission may upon its own motion, or upon complaint made to it by the county assessor or any deputy assessor, or by the board of county commissioners of any county, after summary hearing at which it appears satisfactory to the commission that the assessment of property in any assessment district in such county is not in substantial compliance with law, order a reassessment of all or any part of the taxable property in such district. This reassessment is made by one or more persons, appointed by the commission for that purpose; the expense of any such reassessment is borne by the county in which is situated the district so reassessed. In New Mexico, the state tax commission may, if in its judgment any assessor has failed properly to assess the property in any county, cause the property to be reassessed, either in whole or in part, as the commission may deem necessary. The supervisory control vested in the state tax commission of South Dakota includes the power to order the reassessment of property in any assessing district when in its judgment, this is advisable or necessary.[69]

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[65] Schuyler Wallace, *op. cit.*, p. 89; *Comp. Laws of Colo.*, 1921, sec. 7290; *Burns' Ind. Stat.*, 1926, vol. 3, sec. 14200; *Neb. Comp. Stat.*, 1922, sec. 5965.

[66] H. L. Lutz, *op. cit.*, p. 369.

[67] For decisions upholding the constitutionality of such statutes see: *State v. Daniels*, 143 Wis. 649 (1910); *State Tax Commissioners v. Board of Assessors*, 124 Mich. 491 (1900); *State v. Minnesota and Ontario Power Co.*, 141 N.W. (Minn.) 839 (1913).

[68] Schuyler C. Wallace, *op. cit.*, p. 84; *Page's Ohio Gen. Code.*, Vol. 1, sec. 5624 (4 and 5); *Minn. Gen. Stat.*, 1923, sec. 2365; *Neb. Comp. Stat.*, 1922, sec. 5827-32; *Wis. Stat.*, 1923, secs. 70.64, 73.04-73.06.

The state tax commissioner of North Dakota must appoint a special assessor and deputies under him, ''and cause to be made in any year a reassessment of all or any real and personal property or other subjects or objects of taxation, in any assessment district, when in his judgment such reassessment is desirable or necessary to the end that any or all such property or other subjects or objects of taxation in such district shall be assessed equally as compared with like property or other subjects or objects of taxation in the county wherein such district is situated; and in like manner provide for such reassessment in any county, when in his judgment, it shall be necessary for the equal assessment of any such taxes in such county as compared with like taxes in other counties.'' Such reassessment is reviewed and equalized by the county board and then takes the place of the original assessment made upon such property.[70]

[69] *Rev. Stat. of Kas.*, 1923, sec. 79-1413; *Laws of N. M.*, 1921, p. 291; *Rev. Code of S. D.*, 1919, vol. 2, sec. 6587.

[70] *Supp. to Comp. Laws of N. D.*, 1913-25, sec. 2092a5.

CHAPTER XIX

COUNTY EXPENDITURES AND DEBTS

EXPENDITURES

Available data on county expenditures are less satisfactory than in the case of revenues. The census reports on Wealth, Debt and Taxation give statistics on expenditures for 1902 and 1913, but not for 1922. Some indication of the trend in expenditures may be had from the data on taxes and other revenues in the census reports for 1922, and from some of the state reports of later date.

The following table shows the total county expenditures for certain purposes for 1902 and 1913 as reported to the census:

COUNTY PAYMENTS

	1902	*1913*
General government	$ 50,263,158	$102,334,964
Protection to persons and property	21,178,396*	15,213,229
Charities and corrections	27,761,884	37,815,466
Roads and bridges	28,521,545	55,514,891
Schools	34,096,545	57,682,193
Interest	9,613,100	17,417,593
All other	2,253,602	6,548,190†
Total ordinary	175,526,532	295,342,034
Outlays	21,839,295	89,839,726
Governmental cost payments	197,465,827	385,187,700
Investments	4,045,658	5,106,811
Debt redemption	30,720,333	58,965,207
Trust and agency	253,815,694	422,226,435
Transfers and miscellaneous	4,993,041	10,924,960
	293,574,927	497,223,413
Grand total	$491,040,754	$882,411,113

* Payments reported for Courts.

† Including $364,712 for Libraries, $419,556 for Recreation and $189,122 for public service enterprises.

It will be noted that the total governmental cost payments nearly doubled from 1902 to 1913, the largest increase being for capital outlays, which were more than four times as much in 1913 as in 1902, mainly for roads and bridges. After general government, the most important purposes of ordinary expenditure was for schools; but this was mainly in the far Western and Southern states. This is followed closely by ordinary expenses for roads and bridges. Charities and corrections were the largest class of specialized expenditures in the Middle Atlantic and East North Central states.

In 1913 the average per capita governmental cost payments for counties was $4.49. New England, with an average per capita cost of $1.06, was the lowest, and the Pacific states, with an average of $15.45 per capita, the highest. The six New England states were the lowest with the following per capita costs: Rhode Island, nothing; Vermont, 13 cents; Connecticut, 68 cents; Maine, $1.07; Massachusetts, $1.23; and New Hampshire, $1.71. No states outside New England had per capita costs of less than $2.00. The states having costs of less than $3.00 (besides the New England states) were Illinois, Virginia, South Carolina, North Carolina, Alabama, and Arkansas. Pennsylvania was just above with per capita costs of $3.06. The five states having the highest governmental cost payments for county government were Oregon, $10.83; Arizona, $11.78; Montana, $15.64; Nevada, $17.18; and California, $20.67.

Taxes and other county revenues reported for 1922, as shown in the previous chapter, indicated that the scale of county finances in the latter year was about two and a half times that in 1913.[1] Later reports from a number of states indicate a further increase of about 50 per cent from 1922 to 1927.

The following tables show the principal expenditures of New York and Wisconsin counties for 1918 and 1927. In both states the totals more than trebled. Expenditures on highways in Wisconsin increased nearly 400 per cent and in New York about 900 per cent. Ordinary expenditures for maintenance and operation more than doubled.

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[1] *Wealth, Public Debt and Taxation,* 1922. See I. L. Pollock, ''The Trend of County Expenditures,'' 16 *Nat. Mun. Rev.,* 383-89 (1927).

NEW YORK STATE—COUNTY PAYMENTS *

Payments	*1918*	*1927*
General government	$ 6,179,118	$ 12,219,506
Protection	1,064,243	1,901,233
Health and sanitation	910,477	3,448,806
Highways	688,442	4,959,703
Charities and corrections	6,017,162	10,939,063
Education	285,235	813,701
Recreation	405,752	890,576
All other	110,093	153,249
Interest	1,379,553	4,365,979
Governmental cost payments	16,625,327	39,691,816
Permanent improvements	3,723,902	34,976,668
Temporary loans	3,525,907	17,268,852
Bonds	1,800,411	3,445,227
Other indebtedness	154,546	167,051
Advances and deposits	658,526	2,383,805
Transfers and refunds	182,735	4,086,222
Trust and investment	25,763,817	77,731,264
	35,807,847	140,069,093
Total payments	52,433,175	179,760,909
Balances	11,183,039	27,113,125
Grand total	$63,616,214	$206,874,035

* N. Y. State Comptroller, *Special Reports on Municipal Accounts,* 1918 and 1927.

DISBURSEMENTS—WISCONSIN COUNTIES *

General government	$ 2,275,871	$ 4,084,333
Protection	548,683	1,417,794
Health and sanitation	513,849	1,816,365
Highways and bridges	5,314,518	25,838,221
Charities and corrections	3,717,629	8,063,000
Education	635,146	1,315,940
Recreation		593,268
Paid on debt	1,499,441	6,064,522
Miscellaneous	462,906	384,768
Totals	$14,968,043	$49,578,211

* Wisconsin Tax Com., *Mun. Stat. Dept. Bulletin No. 25,* Jan. 1927; *Report of the Wisconsin Tax Com.,* 1928.

Expenditures of Ohio counties for 1927 were as follows:[2]

Maintenance and operation	$41,605,804
Interest	4,701,416
New construction and equipment	43,716,151
Total	$50,024,372

County disbursements in California, for the year ending June 30, 1928, were as follows[3]:

General government	$ 17,193,774
Protection to persons and property	14,110,772
Health and sanitation	3,998,720
Highways, bridges, etc.	28,461,984
Charities and correction	21,284,854
Education	129,654,839
Recreation	1,840,840
Miscellaneous	4,067,850
Interest	14,559,676
Total ordinary	235,173,309
Debt redemption	12,308,356
	247,481,667
Trust funds	10,339,734
Agency transactions	
State	9,097,564
Districts	16,596,205
Municipalities	48,077,174
Total, trust and agency	84,110,667
Grand total	$331,592,354

With the increase in the scale of county expenditures the need for improved methods of finance administration has become greater. While improvements have been made in recent years, counties in many states still lag behind the national, state and municipal governments in their methods of making appropriations, purchasing supplies, making payments, keeping and auditing accounts, and publishing satisfactory financial reports.

In some cases the only basis for financial work is the tax levy, which may indicate amounts or rates for certain purposes. Often, however, there is also a schedule of appropriations, which may cover expenditures from other sources than taxes; but which in many cases does not include all the expenditures, and is often hastily prepared with no careful study of the situations. Frequently there is no systematic classification of proposed expenditure, and there is a wide diversity of items which makes comparisons impossible. Accounts are poorly kept, payments are often made with little reference to the appropriations, and there is no adequate audit or examination of either claims or the financial accounts.

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[2] *Comparative Statistics, Counties of Ohio,* 1928.

[3] *Annual Report of Financial Transactions of Municipalities and Counties in California for 1928.*

COUNTY BUDGETS [4]

Some twenty states have statutory provisions for county budgets: New York, Delaware, Virginia, North Carolina, Alabama, Kentucky, Ohio, Indiana, Iowa, Wisconsin, North and South Dakota, Montana, Colorado, Oklahoma, Utah, Arizona, California, Oregon, and Washington. But in a considerable number of these the requirements are too indefinite to ensure a satisfactory budget. In New York, the state comptroller is authorized to prescribe a uniform scheme of appropriations for all counties of the state, but has no means to enforce its adoption. The Alabama law merely requires the county board to adopt a budget system. In Arizona, South Dakota and Virginia, the county board must prepare and adopt a county budget, and public hearings must be held before its final adoption.[5]

In several states the duty of preparing the budget estimates is placed on a county officer, as the auditor in California, Washington, Idaho, Utah, North Dakota, and Florida. In Montana the county clerk and recorder collects the estimates and submits them to the county board. In North Carolina budget estimates are prepared by the county accountant, who is appointed by the county board.[6]

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[4] Otho Grandford Cartwright, ''County Budgets and Their Construction,'' 62 *Annals of Amer. Acad. of Pol. and Soc. Sci.* 223-234 (1915); James E. Boyle, ''County Budgets: Economy and Efficiency in Expenditures,'' 47 *Annals of Amer. Acad. of Pol. and Soc. Sci.* 199-212 (1913); Jens P. Jensen, *op. cit.*, pp. 569-570; Wylie Kilpatrick, ''State Administrative Review of Local Budget Making.'' (Mun. Adm. Service, 1927); ''Relations between State and Local Governments,'' published by Chamber of Commerce of the United States (1928).

[5] New York, *General Municipal Law*, secs. 30-38: *Code of Ala.*, 1928, sec. 6789; *Rev. Stat. of Ariz.*, 1913, secs. 4840-42; *Laws of S. D.*, 1927, pp. 93-102; *Acts of Va.*, 1926, ch. 545.

Ohio and Oklahoma have provided for a review of county and other local budgets by county agencies. In each county in Ohio, there is a county budget commission consisting of the county auditor, the county treasurer, and the prosecuting attorney. This commission receives and examines the annual budgets of county, municipal, township, and school authorities, with an estimate of the amount to be raised for state purposes in each taxing district. If the total amount exceeds the amount authorized to be raised, the budget commission shall adjust the amounts to be raised, and may revise and change the estimates, and may reduce any or all items in any such budget, but shall not increase the total of any such budget or any item.[7]

In Oklahoma, there is an excise board for each county consisting of the county clerk, county attorney, county treasurer, county judge, county superintendent, county assessor, and one member of the board of county commissioners designated by the board. Statements of the fiscal condition and estimated needs and probable revenues for each county, city, incorporated town, township, and school district are submitted to the excise boards, which have authority to revise and correct any estimate, either by striking out items, or *increasing* or decreasing items, or adding items. But increases or additions may be made only after the proposed change has been advertised in some paper of general circulation. Appropriations must be itemized so as to show the amount for the several offices and services.[8]

Distinctive methods of preparing budgets and voting appropriations are provided in several states. The Indiana accounting law requires budget estimates on forms furnished by the county auditor; and these forms provide for a fairly complete list of appropriations, but some important elements of a satisfactory budget are lacking. County appropriation and tax levies in this state are not made by the board of county commissioners but by a separate county council, composed of four members elected by districts and three elected at large. By recent legislation, it has been provided that, on complaint of ten or more tax payers, county and other local tax levies may be reduced by the state tax commission; and such reductions have been made in a considerable number of cases.[9]

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[6] *Stat. and Amendments to the Codes of Calif.*, 1927, ch. 435; *Sess. Laws Idaho*, 1927, ch. 232; *Supp. to Comp. Laws of N. D.*, 1913-25, secs. 3314 a 1-3314 a 12; *Laws of Utah*, 1925, ch. 25; *Remington's Comp. Stat. of Wash.*, 1927 Supp., sec. 3997—1-10; *Comp. Gen. Laws Fla.*, 1927, secs. 2302 ff.; *N. C. Code*, 1927, secs. 1334 (56)–(58); *Laws of Mont.*, 1929, ch. 148.

[7] *Page's Ohio Gen. Code*, vol. 1, secs. 5649-3b, 3c, f, d, e; *Laws of Ohio*, 1927, p. 391.

[8] *Comp. Okla. Stat.*, 1921, vol. 2, secs. 9694 ff.

The director of the budget in Iowa, who is appointed by the governor for a period of six years, has general supervisory powers over county budgets. He is given general supervision over the certifying boards and levying boards of all counties with respect to budgets and must prescribe for them all necessary rules, instructions, forms and schedules. A copy of the county budget must be certified to the director of the budget by the county auditor.[10]

In recent years the Wisconsin tax commission has adopted the practice (without statutory authority) of furnishing each county clerk with a budget form a few weeks before the annual session of the county board, to serve as a guide in preparing an adequate budget, and the county officials have come to rely upon these budget forms.[11]

In Kentucky, the county budget is made by a county budget commission composed of the county judge, who is chairman of the commission, and two members appointed by him. The other two members must be at least thirty years of age, residents, and tax payers in the county; they are appointed for a four-year term. The budget commission proposes in the county budget not only expenditures but an itemized county levy to raise the funds necessary. They must file with the fiscal court a written statement explaining their reasons for providing the funds as given in the county budget, together with all data and records considered by them in the preparation of the county budget. They may also be required to appear before the fiscal court to explain the proposed county budget and the reasons for providing the items therein. The fiscal court must also hear the protests or suggestions of any tax payer of the county with reference to the budget. It is the duty of the state budget commission to furnish each county commission with the form of a properly drawn budget; the form furnished each of the county budget commissions must be uniform. The budget commission of the state is given the power and authority to approve all county budgets as to form and arrangement: "This authority is vested in the budget commission of the state for the sole purpose of establishing and maintaining in each county of the Commonwealth of Kentucky a uniform budget system, so that the costs of each separate activity of county government can be ascertained for the information of the people of the state."[12]

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[9] *Burns' Ind. Stat.*, 1926, vol. 2, secs. 5862 ff.; vol. 3, sec. 14239; Philip Zoercher, "The Indiana Scheme of Central Supervision of Local Expenditures," 14 *Nat. Mun. Rev.* 90-95 (1925).

[10] *Code of Ia.*, 1924, secs. 368-9.

[11] Wisconsin Tax Commission, *Report*, 1928, p. 69.

Extensive state control over county budgets is found in New Mexico. Each year the board of county commissioners must furnish to the state tax commission estimates of revenue required to meet the ordinary financial needs of the county for the ensuing year. These estimates are classified and grouped in the form required by the state tax commission; before the first day of September of each year, the commission approves the budget estimates for each county in the state. This may be either in the form submitted or as amended and changed. Such budget is certified to the county authorities and is binding upon all county officials and no claims may be allowed in excess thereof.[13]

The state auditor in Idaho may make such rules, classifications, and prescribe such forms as may be necessary to carry out the provisions of the county budget law. He may define what expenditures shall be chargeable to each budget account, and establish such accounting and cost systems as may be necessary to provide accurate budget information.[14] Supervisory control over county budgets is vested in the state board of control in California, the state tax commission in Arizona, the state examiner in Montana, and the state comptroller in Florida.[15]

Under a local budget law of 1921, each county board in Oregon appoints each year a number of electors and freeholders equal to the number of members of the county board, who with the members of the county board, constitute the budget committee. This committee prepares the county budget and after publication, a hearing must be held on the budget. Similar budget committees are required for other local authorities.[16]

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[12] *Ky. Acts*, 1926, ch. 171.

[13] *Laws of N. M.*, 1925, ch. 138; *Laws of N. M.*, 1921, p. 291.

[14] *Sess. Laws of Idaho*, 1927, ch. 232.

[15] *Stat. and Amendments to the Codes, Calif.*, 1927, ch. 435; *Sess. Laws Ariz.*, 1921, p. 88; *Rev. Codes Mont.*, 1921, vol. 1, sec. 224; *Laws of Mont.*, 1929, ch. 148; *Comp. Gen. Laws of Fla.*, 1927, vol. 1, secs. 2302 ff.

Oregon has also recently tried an interesting method of state supervision of local budgets. By act of 1921 provision was made for the appointment by the governor in each county of over 100,000 population (Multnomah county) of three persons for a three-year term, to be known as the tax supervising and conservation commission. The members must be residents and tax payers of the county for which appointed. The budget estimates of the levying boards (county board, city councils, etc.) of all municipal corporations (county, cities, etc.), in such county must be submitted to this commission. The commission, after giving every levying board a hearing, approves, rejects, or reduces the budget, or any items therein. Increases may be voted for emergencies but only by unanimous vote of all members of the commission and upon request in writing of the proper tax levying board.

By act of 1923 the act was extended to all counties of the state. This amendment was held to be invalid by the Supreme Court of Oregon on the grounds of defective title, and thus all commissions except that of Multnomah county were ended. In 1927 the amendment of 1923 was repealed and this method of supervision is used only for the one county.[17]

A definite financial program should be formulated by some responsible authority and presented to the governing board for its consideration. Such a method would unquestionably lead to economy in county expenditures. A county budget, regardless of the authority that is made responsible for its preparation, should show the following things:[18]

1. The revenues and expenditures of the preceding fiscal year.
2. The estimated revenues and expenditures for the current fiscal year.
3. Departmental requests for expenditures for the next succeeding fiscal year.
4. Estimates of revenue for the next succeeding fiscal year, based upon the tax levy necessary to raise this required revenue.

The proposed expenditures should be classified to show the purposes for which the money is to be spent, and the amount needed for each purpose. The following classification, required in the California county budget law, presents a suitable series of main divisions:

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[16] *Oregon Laws, Supp.* 1921-1927, vol. 2, pp. 1145-49.

[17] *Oregon Laws,* Supp. 1921-27, vol. 2, pp. 1149 ff.; *Gen. Laws of Ore.,* 1921, ch. 208; 1923, ch. 142; 1927, ch. 94. 12 *Nat. Mun. Rev.,* 694 (1923); 13 *ibid.,* 316 (1924).

[18] Cf. *Laws of Utah,* 1925, ch. 25.

1. Salaries and wages;
2. Maintenance and support;
3. Capital outlay;
4. Interest and debt redemption; and
5. Expenditures to be made from bonds or warrant or other income not yet authorized.

CENTRALIZED PURCHASING

The county board usually has some supervision over expenditures, through its control over appropriations and the making of contracts, and the approval of claims against the county. But in many states it has little effective control over the expenditures of other elective officers; and often the expenditures for supplies, materials, and equipment, even for services under its control, are in practice determined by a number of different officials and committees of the board. The concentration of authority and responsibility for purchases in one person, selected by and responsible to the county board, should result in securing lower prices and a better check on the quality of supplies. But centralized purchasing has been established in less than a hundred of the 3,000 counties in the United States.[19]

Such county purchasing agencies have been established in several New York counties. The first was for Monroe county in 1902; Herkimer county followed in 1908 and Westchester county in 1915. Under a general law authorizing centralized purchasing, Oneida county appointed a purchasing agent. Erie county has a well-developed county purchasing office; and in Madison and Franklin counties the auditor acts as purchasing agent. However, road materials and school supplies are usually purchased independently of these central offices.[20]

In New Jersey, boards of chosen freeholders may elect, for a term of three years, some person to act as purchasing agent. It is his duty to classify and standardize, under the direction of the board of freeholders, all materials and supplies to be purchased by the county, and to purchase all such supplies and materials.[21] Centralized purchasing has been established in Essex, Hudson, and Bergen counties.

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[19] Russell Forbes, *Governmental Purchasing* (1929); Frank X. Wood, ''The Purchase of Municipal Supplies,'' *Proceedings of the Second Conference for Better County Government*, 1916, pp. 60-68.

[20] *Laws of New York*, 1917, ch. 167; 1921, ch. 243; 1925, ch. 562. Forbes, *op. cit.*, pp. 46-47.

Under the general California law the board of supervisors may appoint a purchasing agent, and under another law the auditor may act as purchasing agent under the supervision of the county board. Twenty-two counties have established centralized purchasing under these provisions; but in some counties road materials and supplies were in all cases purchased independently. An Act of 1927 authorized centralized purchase of school books and supplies through the county superintendent of schools or a county purchasing agent.[22]

North Carolina, by act of 1927, requires the county board to provide for the purchase of supplies "in such manner as may prevent waste and duplication in purchasing, and may obtain the advantages of purchasing in larger quantities." For this purpose the board may appoint one of its members or some other officer or agent of the county to superintend the purchase of all material and supplies for the county.[23]

Provision is made in Michigan and Indiana for purchasing agents in a few counties. Michigan, by act of 1927, empowers boards of supervisors in counties of over 100,000 population (Kent and Wayne counties) to appoint a county controller and to fix his salary. He is the chief accounting officer of the county, and is also given many duties of a county purchasing officer. It is his duty to make all purchases of "books, stationery, materials and supplies which may be required by the county or its officers and agents, the purchase of which is not otherwise provided for by law, and no contract or order for the purchase of such material or supplies shall be valid or binding upon the county, nor shall the county be liable for the purchase price thereof, except upon the written order of said controller."[24]

Counties in Indiana having a population of 110,000 to 150,000 are authorized to create an agency for the purchase of all supplies and for the sale and exchange of personal property of the county. The board of county commissioners, with the advice and assistance of the county auditor, are to determine the field of activity of the purchasing agency, together with the necessary rules and regulations. The purchasing agent is appointed by the county commissioners.[25]

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[21] *Cum. Supp. to Comp. Stat. of N. J.*, 1911-24, secs. 48-207.

[22] *Pol. Code, Calif.*, 1923, sec. 4041; *Laws of 1927*, ch. 219.

[23] Forbes, *Governmental Purchasing*, p. 47; *Public Laws of N. C.*, 1927, ch. 91.

[24] *Mich. Acts*, 1927, pp. 492-93.

Centralized purchasing for counties has also been established in counties within or coterminous with a city, as for the five counties within New York City and in Philadelphia, and also in a few scattered counties in other states, as Cook county, Illinois; St. Louis county, Minnesota; Hamilton county, Ohio; Allegheny county, Pennsylvania; Multnomah county, Oregon; and Spokane county, Washington.

Partial centralization of county purchasing has also been provided in Texas and Oklahoma; and in New Hampshire and Virginia, counties may purchase supplies through the state purchasing agent.[26]

In many smaller counties, the volume of purchasing would not warrant the creation of an additional officer as purchasing agent with a staff. But this work might be placed in the hands of one of the existing officials.

PAYMENT OF CLAIMS

The statutes generally require that claims against counties be presented to the county board or some county officer, as the county clerk, for audit and allowance. In some states the audit is made by other officers without submission to the county board; while in others this is merely a condition precedent to allowance by the board. It is the general holding of the courts that in allowing claims, county boards are bodies of limited jurisdiction and may not allow claims against the county unless the law provides for the payment thereof.[27]

In some states the courts hold that the allowance of claims against the county is the exercise of administrative or executive, not of judicial power. In other states, however, it has been held that the duty imposed upon county commissioners to audit all claims and to order paid those which are found to be just and legal demands is judicial in its nature. The Supreme Court of Oklahoma has taken the view that ''the rejection of a claim by the board of county commissioners is merely 'a refusal to pay,' is neither a judicial nor ministerial act.''[28]

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[25] *Burns' Ind. Stat.*, 1926, vol. 2, secs. 5992 ff.

[26] Forbes, *op. cit.*, pp. 48, 49.

[27] *People v. Wabash Ry. Co.*, 145 N.E. (Ill.) 642 (1924); *Mills v. Lantrip*, 185 S.W. (Ky.) 514 (1916); *DeVaughn v. Booten*, 92 S.E. (Ga.) 629 (1917).

The most common limitation placed upon county boards is that no expenditure of money may be made in aid of an individual, corporation, or association. It is also the holding of the courts that money may be spent only for public purposes.

An expenditure by a county board to pave a street in a city has been upheld; this was held to be not a gift but a public purpose. Other expenditures which have been upheld are for collecting and maintaining a display of county products and industries at domestic or foreign exhibitions to encourage immigration and trade; the erection of a memorial hall; and the eradication of ticks in Texas, since the livestock industry is of primary importance to the state.[29]

Expenditures for agricultural extension work have also been upheld. Though made directly to and for the chief benefit of those engaged in agricultural pursuits, it was held that the ultimate purpose was to contribute to the welfare and health of the people of the whole state. Expenditures for the collection and compiling of vital statistics have been upheld as being necessary under modern conditions to the well-being of society.[30]

On the other hand, it has been held in Indiana that a board of county commissioners could not pay the expenses of the superintendent of the county poor asylums in attending charitable meetings, even though requested to do so by the state board of charities. The court admitted that such meetings were of educational value, but stated that ''public officers are presumed to have the necessary qualifications.'' The ''contingent'' plan of the Montana Farm Loan Act, providing for loans by counties and constituting any county a statutory guarantor of loans made by it, was held to be contrary to the provisions of the state constitution forbidding counties to loan their credit to individuals and to expend their credit for other than public purposes. In Idaho it has been held that a county may not donate money to a live stock association to assist in defraying the expenses of a fair; and in Alabama it has been held that a board of revenue of a county might not pay $150 per month to the secretary of a local bar association.[31]

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[28] *Board of County Commissioners v. Cypert,* 166 Pac. (Okla.) 195 (1917); *State v. Goldsmith,* 50 So. (Ala.) 394 (1909); *Fountain v. State,* 97 So. (Ala.) 59 (1923); *Padgett v. Young County,* 204 S.W. (Texas) 1046 (1918); *State v. Johnson,* 139 N.W. (Neb.) 669 (1913); *Slater-Business Printing Co. v. Tincher,* 256 S.W. (Ky.) 722 (1923). Also see ''Counties,'' 15 *Corpus Juris* 651 ff.

[29] *City of Oakland v. Garrison,* 228 Pac. (Calif.) 433 (1924); *Beris v. Wright,* 175 Pac. (Idaho) 815 (1918); *Allied Architects' Assoc. of Los Angeles v. Payne,* 221 Pac. (Calif.) 209 (1923); *Owen v. Fleming-Stitzer Road Bldg. Co.,* 250 S.W. (Texas) 1038 (1923).

[30] *Carman v. Hickman County,* 215 S.W. (Ky.) 408 (1919); *Furlong v. Darnaby,* 257 S.W. (Ky.) 707 (1923).

After a claim has been presented to the county board or other auditing authority and received its approval, a warrant is issued for the payment of the claim. This warrant is paid upon presentation to the county treasurer. It is the general holding of the courts that the county treasurer is a mere disbursing officer, and has no right or power to question the action of the board of supervisors or to go behind it, but is bound to pay warrants drawn upon him by the board.[32] But in some cases it has been held that if the board allows a claim not legally chargeable against the county, the treasurer is justified in refusing payment.

COUNTY ACCOUNTS AND REPORTS

The methods of keeping accounts by counties has received much adverse criticism; the accounts have not only been poorly kept but there has been no uniformity among the counties of the state. The advantages of uniform, improved methods of county accounting have been stated by the chief of the Municipal Accounts Bureau of the New York State Comptroller's Department to be as follows:[33]

> "1. Each county will have an accurate and complete record of all its financial affairs—one which will disclose at all times its financial condition and the condition of each of its funds and accounts.

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[31] *Lake County v. Neuenfeldt,* 136 N.E. (Ind.) 580 (1922); *State v. Stewart,* 161 Pac. (Mont.) 309 (1916); *Fluharty v. Board of Commissioners of Nez Perce Co.,* 158 Pac. (Idaho) 320 (1916); *Rogus v. White,* 70 So. (Ala.) 994 (1916).

[32] See *Leachman v. Board of Supervisors of Prince William County,* 98 S.E. (Va.) 656 (1919). Cf. *State v. Chauvin,* 85 So. (La.) 645 (1920); *Jack v. Taylor,* 142 Pac. (Calif.) 121 (1914); *Mugrage v. People,* 141 Pac. (Colo.) 522 (1914); *People v. Neff,* 106 N. Y. S. 747 (1908); *Southern Audit Company v. McKenzie,* 61 S.E. (N.C.) 283 (1908); *Bechtel v. Fry,* 66 Atl. (Pa.) 992 (1907); *State v. Montoya,* 146 Pac. (N. M.) 956 (1915). Cf. Ch. IX, notes 32 and 33.

[33] Mark Graves, "Simplification of County and Local Municipal Finances," *Proceedings of the Second Conference for Better County Government,* 1916, pp. 74-81. See Arthur J. Peel, "Some Problems of County Government Accounting," 30 *American City* 605-607 (1924).

2. The accounts of revenues and expenses being standard and the classification uniform of administration, it will be possible to make intelligent comparisons of expenses and revenues for different years.
3. Because the system will be uniform and employed in all counties of the state, it will become possible to make significant comparison between the different counties of the state.
4. By reason of all this, the officers of the county will be in a position to plan more intelligently the financial program for the future."

In a report made at the Western States Taxpayers' Conference in 1927, it was recommended that improved methods of accounting for counties be adopted. "The public, and particularly the tax paying public, has the right and the duty to know how the public business is conducted. This knowledge it cannot acquire in any reasonable degree from the publication of the usual bookkeeping accounts of public officials."[34] Uniformity of accounting methods is needed to secure this; in addition to the publication of the reports within each county, it was suggested that "a tabulated statement of all county reports should be published by the state, set up according to the uniform schedule, in order that the financial transactions of the various counties may be compared by the interested tax payer."

State supervision and control seems to offer one of the best methods of securing improved county accounting and reporting. Many states now provide for some centralized control in this field, the type and degree of supervision showing great variation.[35]

Effective state supervision over county and other local accounts seems to have begun in Minnesota, where the office of state examiner was established in 1878, with power to inspect the accounts of county officers. A year later Massachusetts provided for uniform accounts and permanent reports and the inspection of county accounts, at first under the commissioners of savings banks and later under a controller of county accounts.[36]

In 1890, the new state of Wyoming, in its first state constitution, established a comprehensive system of state supervision of local accounts, by a state examiner. Other states in this region followed this example to some extent. Montana and North Dakota each created the office of state examiner; South Dakota and Nevada provided for a similar supervision under the state auditor, and Kansas under a state accountant. In 1903, Nevada established a more intensive system of control under a state board of revenue; and in the same year Florida created the office of state auditor whose duties included the supervision and inspection of county accounts.

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[34] *The Tax Digest*, November, 1927, pp. 167-169.

[35] Wylie Kilpatrick, "State Supervision of Municipal Finance in New Jersey," 14 *Nat. Mun. Rev.*, 490-501 (1925); Wylie Kilpatrick, "State Supervision of Municipal Accounts," 12 *Nat. Mun. Rev.* 247-54 (1923); Schuyler C. Wallace, *op. cit.*, ch. 3.

[36] J. A. Fairlie, *Local Government in Counties, Towns and Villages*, pp. 255 ff.; 47 *Annals Am. Acad. Pol. and Soc. Science* 203 (1913).

In 1902 the state of Ohio enacted the most important and far-reaching law on this subject up to this time. This provided for a uniform system of accounting, auditing and reporting for every public office in the state, under the supervision of a newly established bureau of inspection in the office of the auditor of state, and authorized annual examinations of the finances of all public offices. Other states followed; and by 1912 county accounts were subject to more or less supervision in more than half of the states, and town and city accounts in about one-fourth of the states. Since then the movement has continued, until more than forty states now provide for some degree of state supervision over local accounts.[37]

There are, however, important variations in the authority of the state agencies and in the degree of supervision exercised. In some twenty states all local accounts are subject to examination; but in some states only certain local activities are supervised; and in others state audits are made only upon the request of the local authorities or of local residents or tax payers.

The comptroller of New York may formulate and prescribe a uniform system of accounts for counties. Annual reports must be made by all counties to the comptroller in a form prescribed by him, showing their financial condition. The comptroller must cause the accounts of all fiscal officers of counties to be inspected by examiners appointed by him at such periods as he deems necessary.[38] Annual reports are published with useful tables of comparative statistics.

In Massachusetts the state director of accounts or his representative must examine the books and accounts of all county officers receiving money payable to the county. He must require, so far as possible, uniformity and correctness in the method of keeping such accounts, and may prescribe a uniform system. A brief annual report of county accounts is published; but this is less useful than the reports of some other states, or the reports on town and city finances in Massachusetts. New Hampshire also provides for state supervision of local accounts.[39]

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[37] Schuyler C. Wallace, *State Supervision over Cities*, pp. 91 ff. No action seems to have been taken in Arkansas, Illinois, Pennsylvania, and South Carolina.

[38] *Cahill's Consol. Laws of N. Y.*, 1923, secs. 30 ff.

The Ohio law is the most comprehensive, and under it useful reports have been published, and several million dollars of illegal and irregular payments have been discovered, a large portion of which has been restored. County losses have been more than those of all other taxing districts combined.[40]

Indiana, in 1909, established a department of inspection and supervision of public offices, having jurisdiction over all public offices in the state. Uniform accounting is prescribed; inspections are made by a force of field examiners under a state examiner; and irregularities are disclosed and corrected. Comparative statistics are published annually.[41]

In Michigan, by constitutional provision, the legislature must provide by law for the keeping of accounts by all county officials; it must also provide for the supervision and audit of such accounts by competent state authority and for uniform reports of all public accounts to such authority. By statute, it is made the duty of the auditor general to formulate and prescribe a uniform system of bookkeeping and accounting for ''county treasurers, or such other county officers as are charged with the keeping of accounts.'' After such system has been formulated and established it is the duty of the auditor general to make a thorough examination of the business and financial affairs of such county officers at least once in each year. Annual reports must also be made by county officers to the auditor general.[42]

In Wisconsin the auditing and accounting service of the state tax commission, authorized in 1911, is on a voluntary basis. Yet by 1916 the uniform system of accounts had been installed in 57 of the 71 counties, and in 72 of the 138 cities, as well as a large number of towns and villages. The service at that time required a staff of fifteen field accountants to handle the applications received. At first audits were requested for the most part only where irregularities were suspected; but annual audits are becoming more frequent. In the two years, 1927 and 1928, there were forty-seven audits of county accounts, besides more than eighty inspections. A summary of county and other local finances is published.[43]

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[39] *General Laws of Mass.*, 1921, vol. 1, ch. 35, secs, 44 ff.; *Laws of N. H.*, 1921, p. 65.

[40] *Page's Ohio Gen. Code*, vol. 1, secs. 274 ff.

[41] *Statistical Report for the State of Indiana*, 1928, pp. 93 ff.

[42] *Const. of Michigan*, Art. X, 18; *Comp. Laws of Mich.*, 1915, vol. 1, secs. 266-69.

In Iowa the auditor of state is authorized to prescribe a uniform system of blanks and forms for all financial accounts, receipts, and reports of county, town, and city officers. All such officers must install and use the system of uniform blanks and forms so prescribed.[44] The aim is "to render a needed public service by verifying the county accounts, bringing about a more uniform system of accounts, and increasing the efficiency of the service rendered by public officials in county offices."[45] For the year 1928, the total amount of errors discovered aggregated $301,694, of which $223,160 had been paid or adjusted. The total cost of the examinations was $57,850. In most counties the amount involved was small, but in one county it was $42,130 and in another $23,170. In most counties the amount paid or adjusted as a result of the examination exceeded the cost. Many counties have adopted the uniform system of accounts, but some continue the old methods.[46]

The laws of Minnesota, Nebraska, North Dakota, South Dakota, Montana, Wyoming, and Colorado also provide for the installation of a system of county accounting for the counties of the state. This is done by the auditor of public accounts in Nebraska; the state examiner in North Dakota, Montana, and Wyoming; the public examiner in Colorado; and the executive accountant in South Dakota. An examination of local accounts must be made by these state authorities in Nebraska at least every two years; in North Dakota at the request of the county commissioners; and in Montana, South Dakota, Wyoming, and Colorado at least once each year.[47]

In Virginia and Missouri the state authorities install the method of accounting upon the request of local authorities. When requested by the board of supervisors of any county, the state accountant in Virginia is to establish a system of bookkeeping and accounting. The examiner may examine county books and accounts at any time and he must make an audit at least once every two years. He must prepare and publish a statement annually showing the comparative cost of county government as among the counties of the state.[48]

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[43] Wisconsin Tax Commission *Reports*, 1916, p. 134; 1928, p. 68.

[44] *Code of Iowa*, 1927, secs. 111-112.

[45] *Report on County Accounts for the Biennial Period ending December 31, 1923* (1924).

[46] *Report of Auditor of State of Iowa for Biennial Period Ending December 31, 1928*, County Accounting Dept.

[47] *Comp. Stat. Nebr.*, 1922, secs. 4972, 4975; *Comp. Laws N. D.*, vol. 1, secs. 227 ff.; *S. D. Rev. Code*, 1919, vol. 2, sec. 6899; *Rev. Codes Mont.*, 1923-27 Supp., secs. 210 ff.; *Wyo. Comp. Stat.*, 1920, secs. 168 ff.; *Comp. Laws Colo.*, 1921, secs. 309 ff.

It is the duty of the auditor of state in Missouri, either in person or by one or more competent persons appointed by him, to inspect, visit, examine, and audit the accounts of the various county officers when called upon to so do by the county court of any county or when petitioned by three hundred tax paying citizens of any county. He is also to prescribe and install a system of accounting and reporting when petitioned as provided above. The plan of compulsory adoption of uniform county accounting and state auditing of county accounts is preferable to this optional plan found in Missouri.[49]

A department of examiners of accounts has been created in Alabama. This is made up of a chief examiner and not to exceed seventeen assistant examiners appointed by the governor. Among their other duties they are authorized to examine and audit the books, accounts, vouchers, and records of all county or local school or other district officers, including tax assessors, charged with the duty of collecting or disbursing any part of the public revenues belonging to either the state or any county. The expense of the audit of county accounts is made a charge upon the county, payable by the county treasurer upon receipt of the state auditor's warrant.[50] In Mississippi, the state auditor is ex officio chief inspector and supervisor of public offices and public institutions. Among his other duties, he is authorized to formulate, prescribe, and install a system of accounting and reports which shall be uniform for all county offices and which shall exhibit true accounts and detailed statements of all public funds collected, received, disbursed, allowed, and expended for any purpose whatsoever. The chief inspector also has power to inspect the accounts of county officers.[51]

[48] *Va. Code,* 1924, secs. 565 ff. By Act of 1926 (ch. 543), it is made the duty of the state accountant to devise a system of bookkeeping and accounting for the use of all county and other local officials.

[49] *Rev. Stat. of Mo.,* 1919, vol. 3, secs. 13302-303.

[50] *Code of Ala.,* 1923, vol. 1, secs. 735-752.

[51] *Hemingway's Miss. Code,* 1927, vol. 2, secs. 3761-69.

In Tennessee, the commissioner of finance and taxation, with the approval of the governor, appoints three auditors whose duty it is to make an annual audit of the several counties of the state. The counties pay a part towards the cost of maintaining these auditors. In North Carolina, the cost of the audit of county accounts, which is made by the state auditor, is borne by the county if the audit shows the county owes the state anything, and by the state if it shows nothing due. West Virginia, Louisiana, and Oklahoma also provide for state supervision of local accounting.[52]

In California the state board of control, through the department of public accounting must devise, install and supervise a uniform system of accounting and reporting for any and all officers or persons permitted or charged by law with the keeping of accounts and records and the custody, control and handling of public money. The object of the law is to provide similar and comparable data for every public officer and every public account of the same class, so that there may be a general, systematic and uniform check upon the receipt and disbursement of all public revenue. The department of public accounting may require financial and statistical reports from such officers and may examine their books.[53] An annual report of the financial transactions of municipalities and counties is published.

In New Mexico, county accounting is under the supervision of the traveling auditor of the state. He must formulate and install a system of accounting and reporting for county officers. He must further require quarterly and annual financial reports and may require monthly reports. These must be published every two years as a public document. Accounts of county officers must be examined at least once each year by the traveling auditor.[54] Arizona, Idaho and Washington also provide for state supervision of county accounts.[55]

A different method is used in New Jersey to secure an efficient audit of the accounts of county officers. County accounts must be audited annually if the county has an assessed valuation of over $3,000,000, and biennially if it has an assessed valuation of less than this amount. Such auditing may be done only by auditors or accountants who hold a certificate of registration as a municipal accountant for New Jersey. Every such accountant must file a report of his audit with the state commissioner of municipal accounts.[56]

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[52] *Ann. Code of Tenn.*, 1926 supp., secs. 948 a 10 ff.; *Public Laws N. C.*, 1921, ch. 236; *Barnes' W. Va. Code*, 1923, pp. 124-27; *Const. of Okla.*, Art. VI, sec. 19; *Acts of La.*, 1918, No. 109, sec. 5.

[53] *Pol. Code of Calif.*, 1923, secs. 687-690.

[54] *Laws of N. M.*, 1921, ch. 186.

[55] *Rev. Stat. Ariz.*, 1913, p. 273; *Remington's Comp. Stat. Wash.*, 1923, vol. 3, secs. 9952 ff.; *Idaho Comp. Stat.*, 1919, vol. 1, sec. 285.

The county fiscal control act which was passed in North Carolina in 1927 makes it the duty of the board of county commissioners to appoint "some person of honesty and ability, who is experienced in modern methods of accounting" as county accountant. In counties having a county auditor, the county board must confer all powers and duties of the county accountant upon him. In counties having no county auditor, the county board may impose the duties upon certain other county officers. The county accountant in North Carolina must advise with the different officers and departments of the county and with state officers as to the best and most convenient method of keeping accounts, and he must inform himself as to the best and simplest method of keeping accounts "so as to bring about as far as possible a simple, accurate, and uniform system of keeping accounts of the counties and subdivisions." [57]

COUNTY LOANS AND DEBTS

A phase of county finances of increasing importance is that relating to loans and debts. These are in the first stage a means of meeting expenditures, and may thus be considered for the time being a form of income, though not of revenue. But they also constitute an obligation to be met by payments for interest and principal. Debts are regularly incurred in the ordinary course of public business, in the form of salaries and wages for officials and employees, for purchases of supplies, and on contracts for public undertakings; and authority to carry on these transactions seems to imply the power to incur the obligations. If revenues are not sufficient to meet these obligations a floating debt arises. But debts are also incurred by borrowing, on promissory notes, or for larger amounts by the issue of bonds; and the legal authority to make loans based on such negotiable paper is dependent on and regulated by constitutional and statutory provisions and judicial decisions.

[56] *Laws of New Jersey,* 1918, chs. 267-268; *ibid.,* 1921, ch. 105.

[57] *Public Laws of North Carolina,* 1927, ch. 146. Also see: Paul W. Wager, "North Carolina to Have Better County Government," 16 *Nat. Mun. Rev.* 519-526 (1927); 16 *Nat. Mun. Rev.* 428-429 (1927).

It is the general holding of the courts that counties have no implied power to borrow money but that the power must be expressly granted. The "power to borrow money is not an incident to local political government, and upon principle a county cannot exercise it in the absence of express authority of law so to do."

The Supreme Court of the United States has held that "mere political bodies, constituted, as counties are, for the purpose of local police and administration and having the power of levying taxes to defray all public charges created, whether they are or are not formally invested with corporate capacity, have no power or authority to make and utter commercial paper of any kind, unless such power is expressly conferred upon them by law, or clearly implied from some other power expressly given, which cannot be fairly exercised without it." It was held that such power was "entirely foreign to the purposes of their creation, and as never to be conceded except by express legislation, or by necessary, or, at least, very strong implication from such legislation." The power to issue bonds cannot be implied from the grant of power to erect and repair public buildings.[58]

In some states, however, it has been held that counties may incur indebtedness in so far as it is necessary to carry out powers which are expressly conferred. The Supreme Court of Iowa has held that although a board of supervisors was not given express power to incur indebtedness for the purchase of property for county purposes, that since it was given power to purchase property, without any particular mode of purchase being provided, it could see "no valid reason why the board may not, as a necessary incident to this power, create an indebtedness on account of the real property so bought." [59]

Where there is a constitutional limitation on the total amount of money that a county may borrow, this does not, according to the Supreme Court of Tennessee, imply authority to issue bonds for any purpose, so long as it is within the constitutional limitation. The power to borrow for the specific purpose must be conferred by statute, either general or special, since counties cannot, "in the exercise of their ordinary political or governmental powers, issue bonds for any purpose.''[60]

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[58] *Claiborne County v. Brooks,* 111 U. S. 400 (1883); cf. *Stradtman v. County of Menard,* 56 Ill. App. 120 (1894); *Police Jury v. Britton,* 15 Wall, 566 (1873); *Wells v. Supervisors,* 102 U. S. 625 (1880); Dillon: *Municipal Corporations,* 2nd ed., secs. 117-125.

[59] *Witter v. Board of Supervisors,* 83 N.W. (Ia.) 1041 (1900).

Constitutional Provisions.[61]—As a result of a period of excessive borrowing before and after the Civil War, constitutional limitations on local debts are now found in many states. The purposes for which counties may incur debts are often limited. They may be restricted to ''county purposes'';[62] to erecting necessary public buildings and making or repairing roads and bridges;[63] or there may be a broad grant, as in South Carolina, where the legislature may not authorize counties to issue bonds for any purpose ''except educational purposes, to build and repair public roads, buildings, and bridges, to maintain and support prisoners, pay jurors, county officers, and for litigation, quarantine, and court expenses and for ordinary county purposes to support paupers and pay past indebtedness.''[64]

In some states the emphasis is placed upon the negative side of county borrowing, or the things for which indebtedness may not be incurred. Several states provide that the legislature may not authorize counties to lend their credit to or in aid of any individual, association or corporation by issuing bonds. Some states specifically enumerate railroads as corporations for which counties may not lend their credit to aid;[65] Nevada, however, excepts railroads from the constitutional provision forbidding counties to lend their credit in aid of corporations.[66]

By constitutional provisions the amount of the debt that a county may incur is limited in many states.[67] A common means used is to limit the debt to a certain percentage of the assessed valuation. This is placed at 2 per cent in Kentucky,[68] Oregon, Utah, and Wyoming, and at 10 per cent in New York and Nebraska;

[60] *McCord v. Marshall County,* 280 S.W. (Tenn.) 692 (1926).

[61] See H. F. Secrist, ''An Economic Analysis of the Constitutional Restrictions on Public Indebtedness in the United States,'' *Bull. of the Univ. of Wis., Economics and Political Science Series,* vol. 8, no. 1 (April, 1914).

[62] *Const. of N. Y.,* Art. VIII, sec. 10; *Const. of Utah,* Art. XIV, sec. 4; *Const. of Wash.,* Art. VIII, sec. 6.

[63] *Const. of Colo.,* Art. XI, sec. 6; *Const. of N. M.,* Art. IX, sec. 10.

[64] *Const. of S. C.,* Art. X, sec. 6.

[65] *Const. of Miss.,* Art. VII, sec. 183; *Const. of Wyo.,* Art. III, sec. 39; *Const. of Mont.,* Art. V, sec. 38.

[66] *Const. of Nev.,* Art. VIII, sec. 10.

[67] See *Index Digest of State Constitutions,* pp. 280-86.

[68] Some exceptions: see *Const. of Ky.,* sec. 158.

the average is about 5 per cent of the assessed valuation. In some cases a constitutional limit is fixed, but this may be exceeded by a popular vote. Pennsylvania counties may not incur a debt exceeding 2 per cent of the assessed valuation except by popular vote; they may not exceed 7 per cent of the assessed valuation except by a three-fifths vote; and in any case the limit is 10 per cent of the assessed valuation. Counties in Arizona are limited to 4 per cent of the assessed valuation, but this may be increased to ten per cent by vote of the property taxpayers. Washington counties are limited to 1½ per cent of the assessed valuation; but by a three-fifths vote of the electors this may be increased to 5 per cent.

The requirement of approval by the voters before a debt is incurred is found in several states. In some cases this vote is required only when the debt exceeds a certain amount, as noted above in Pennsylvania, Arizona, and Washington. Counties in Montana may not incur any debt or liability for a single purpose to an amount exceeding $10,000 except by a majority of the electors voting at an election. In some cases the county may not incur in any manner or for any purpose, indebtedness or liability "exceeding in any year the income and revenue provided for such year," unless approved by popular vote. In California and Idaho a two-thirds vote of the qualified electors is required.[69]

Some states by constitutional provision provide a maximum period within which a county debt must be paid. Counties are required to provide for the collection of an annual tax sufficient to pay interest and to constitute a sinking fund for the payment of the principal within a specified period. This is placed at twenty years in Idaho, Illinois, Missouri, and Wisconsin; at twenty-five years in Oklahoma; at thirty years in Georgia and Pennsylvania; at thirty-four years in West Virginia; at forty years in Kentucky; and at fifty years in New Mexico.

Statutory Provisions.—Within the constitutional limitations authority to borrow money and issue bonds is conferred by statute; and statutory provisions may impose similar or additional restrictions to those in the state constitution. In some states county bonds are authorized for numerous purposes. In Pennsylvania, they are authorized for bridges, canals, county buildings, flood prevention, gymnasiums, highways, tunnels, joint poorhouses, memorial halls, playgrounds, public baths, recreation centers, improvement of streams, swimming pools, workhouses, and county schools for dependent and defective children. In Ohio, county bonds may be issued for bridges, canals, public highways, county buildings, hospitals, county trunk sewers, county ditches, grade crossing elimination, workhouses, and waterworks. In Texas, they are authorized for court-houses and jails, hospitals, irrigation and reclamation works, roads, seawalls, viaducts and bridges, schools, and to repair storm damages.

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[69] See *Const. of Calif.*, Art. XI, sec. 18; *Const. of Idaho*, Art. VIII, sec. 3. Cf. *Const. of Ky.*, sec. 157. A later amendment to the Kentucky constitution (sec. 157a, adopted in 1909) increases the borrowing power for road purposes, subject to a popular vote, but without the requirement of two-thirds.

In Georgia, a two-thirds vote of the electors is required for bond issues, and in Oklahoma a three-fifths vote. In Texas, a two-thirds vote of the property tax paying electors is required for road improvement bonds; but with this such bonds may be issued up to one-fourth of the assessed value of property for taxation.[70]

Administrative Control.—The provisions in state constitutions dealing with county debts are in many cases too fixed and rigid, leading in some cases to a curtailment of wise and necessary bond issues and in others to devising methods for borrowing which make the constitutional provisions ineffective. In place of the arbitrary and detailed provisions found in many constitutions, emphasis should be placed upon the use of credit for public purposes only and the obligation to make tax levies adequate to meet debt charges. This should be supplemented by administrative control over the creation and redemption of county debts.

State supervision over county loans is provided in a number of states. Some require the approval of the validity of a proposed county bond issue by a state authority. This is the attorney general in Oklahoma, Texas, and West Virginia; in Missouri it is the auditor. Several states require statements to be filed by the county auditor, county clerk, or county treasurer, with some state officer, usually the state auditor.[71]

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[70] *Georgia Code,* 1926, sec. 442; *Compiled Okl. Stat.,* 1921, sec. 10091; *Texas Rev. Civil Stat.,* 1925, Art. 726. Cf. *North v. MacMahon,* 26 Okl. 502, 110 Pac. 1115 (1910); *Richter v. Chatham Co.,* 146 Ga. 218, 91 S.E. 35 (1916).

[71] *Comp. Stat. of Okla.,* 1921, vol. 2, sec. 4284; *Vernon's Ann. Texas Stat.,* vol. 13, sec. 4398; *W. Va. Code,* 1923, p. 993; *Rev. Stat. of Mo.,* 1919, vol. 1, sec. 1063; *Comp. Stat. of Neb.,* 1922, sec. 289; *Remington's Comp. Stat. of Wash.,* 1922, vol. 3, sec. 9955; *Public Laws of N. C.,* 1925, ch. 100; *Sess. Laws of Idaho,* 1921, ch. 171. In at least four states where reports as to local bond

A statute of North Carolina of 1921, after pointing out that: "since the default in payment for a single day of the interest or principal of bonds or notes issued by any county, township, school district, or municipal corporation, results, not only in discredit to the obligor, but seriously affects the credit of the state itself and all of its political subdivisions; and whereas, in order to protect the credit of the state and all of its subdivisions, it is imperative to provide state supervision of the means and methods for payment of such principal and interest promptly as the same falls due." The recording officer of such local governing bodies must report to the state auditor any bond issues, giving the amount so authorized, their date, the time or times of maturity thereof, and of the interest payable thereon, the rate of interest to be borne, the place or places at which the principal and interest will be payable, the denomination thereof, and the purpose of issuance. The statement must also contain the name of the board in which is vested the authority and power to levy the taxes for the payment of the principal and interest of such bonds, and a reference to the law under which such bonds are issued. No such bonds are valid until this statement has been filed with the state auditor.

The state auditor then mails to the recording officer of each board having the power to levy taxes for the payment of principal or interest of such obligations, at least thirty days before the time for the levy of taxes in each year, a statement of the amount to be provided by taxation or otherwise for the payment of the interest accruing and for the payment of the bonds then maturing.[72]

In Indiana, all municipal corporations, including counties and townships, "may issue such bonds or other evidences of indebtedness, as it may deem necessary." In case the proposed issue exceeds $5,000 there must be publication of notice in the county newspapers. Ten or more tax papers who object to the proposed bond issue may bring the question before the state tax commission by filing a petition with the county auditor, who in turn certifies the

issues are required (Missouri, Nebraska, New Jersey, and North Carolina), the state auditor or other official certifies to the local authorities the tax levy necessary to meet the obligations on such bonds. In New Jersey, these constitute mandatory items in the local budget, and in Missouri they are collected along with the state taxes. In Iowa and Oklahoma, if local authorities fail to levy taxes for bond issues, the state auditors are required to take steps to secure such levies; and in California there are similar provisions as to counties. Schuyler C. Wallace, *op. cit.*, p. 97.

[72] *Public Laws, N. C.*, 1921 extra session, ch. 1; 1923, ch. 123.

petition to the state commission. A hearing is held upon such petition and the decision of the state tax commission upon the issuance of the bonds and the amounts thereof, if any, which may be lawfully issued is final.[73]

Five or more tax payers in Iowa may object to a proposed bond issue of a county or city and by filing a petition with the county clerk, bring the question before the state director of the budget. The director sets a time and place for the hearing and his decision in the matter is final.[74]

In Michigan, the procedure and limitations under which counties, townships, cities, villages, and school districts may issue bonds is outlined in great detail by statute. Before any such subdivision may issue bonds, the officer having charge of its financial records, must transmit to the state treasurer, a sworn statement showing the dates of issuance, purposes, amounts and maturities of all bonds or other indebtedness outstanding, the assessed valuation of all taxable property, the condition of all sinking funds, and such other information as the state treasurer may require. If the treasurer finds that the issuance of the bonds will violate the provisions of the state laws or cause the debt to exceed any constitutional or statutory limit, he so certifies to the local subdivision. No bonds may be issued until such certificate has been made.[75]

Growth of County Debt.—At the census of 1870, county debt in the United States was reported as aggregating more than $157,000,000, about $4.00 per capita. Much of this was for subsidies to railroads and other corporations, and for funding deficits. Constitutional and statutory restrictions brought about a reduction during the next twenty years, and in 1890, the aggregate county debt was $145,000,000, or $2.50 per capita. Since then there has been an upward movement at an increasing rate to $1,272,000,000 in 1922, or

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[73] *Burns Ind. Stat.*, 1926, vol. 3, sec. 14240. The following table shows the amount of bonds considered by the Indiana State Board of Tax Commissioners in the period March 10, 1921–December 18, 1923:

	Approved	*Disapproved*
Total road bonds	$9,392,868	$9,176,473
Total school bonds	11,445,075	3,435,603
Total other bonds	1,853,820	297,500
	$22,691,763	$12,909,576

("Public Indebtedness in Indiana," *Bulletin of Extension Division*, Indiana University, January, 1924.)

[74] *Code of Iowa*, 1927, secs. 364-67.

[75] *Public Acts of Mich.*, 1925, No. 273.

$13.18 per capita. This increase of county debt has been at a more rapid rate than state debt, and in the last decade at a larger percentage rate than the debt of incorporated municipalities. County debt in 1922 was larger than state debt.[76]

During the decade 1912 to 1922, county debt more than trebled; and in eleven states increased more than sixfold. The largest county debts in 1922 were in the states of Texas, Ohio, Indiana, New Jersey, Pennsylvania, and North Carolina. But the highest per capita county debts were in Arizona, Montana and Nevada. Allegheny county, Pennsylvania, had the largest debt of any county, more than $30,000,000, followed by Essex and Hudson counties, New Jersey, Cuyahoga county, Ohio, and Cook county, Illinois. The highest per capita county debts were for Meagher and Golden Valley counties, Montana ($145 and $133), followed by three counties in Arizona ($130 to $84), three counties in Nevada ($94 to $62), Buncombe county, North Carolina ($61.75), and Eastland county, Texas ($61.04).

NET DEBT, IN THOUSANDS OF DOLLARS

			Per capita	
United States	*1890*	*1922*	*1890*	*1922*
State debt	$ 211,210	$ 935,544	$ 3.37	$ 8.64
County debt	145,048	1,272,790	2.51	13.18
Incorporated places	699,103	4,703,322		
Other civil divisions	81,839	1,778,084		
Totals	$1,137,200	$8,689,740	$18.16	$79.90
	COUNTY DEBT *			
States				
Arizona	1,954	20,086	32.78	54.64
California	5,379	53,726	5.92	16.93
Indiana	6,406	77,115	2.92	25.64
Minnesota	3,318	51,262	2.55	32.91
Montana	2,005	27,350	15.17	44.78
New Jersey	3,728	73,854	2.58	22.27
North Carolina	1,514	67,012	.94	25.28
Ohio	7,797	94,490	2.12	15.68
Pennsylvania	7,841	70,390	1.86	9.91
Texas	6,892	96,940	3.08	19.72
Nevada	813	2,717	17.76	34.35

* U. S. Census Reports on *Wealth, Debt and Taxation*, 1922: *Public Debt*, pp. 10 ff.

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[76] There has been, however, a change in the purposes for which county debt is incurred. Railroad and other subsidies have practically disappeared; and the recent debt is largely for roads and bridges, public buildings (including courthouses, jails and schools) and other public works.

PART V

SPECIAL PROBLEMS

CHAPTER XX

NEW ENGLAND TOWNS

In all of the states there are smaller areas within the counties for various political and administrative purposes. Each county is usually divided into towns, townships, or districts, which together make up the county, while the more densely populated districts are separately organized as villages, incorporated towns, boroughs or cities. The New England towns differ so much from townships and districts as found in other states that they cannot well be considered together, and each of the main types is covered in a separate chapter.[1]

In New England, the towns still remain the primary units of local government. Their importance is due in part to their exercise of functions performed elsewhere by county officers, but still more to the combination of the functions of rural townships and semi-urban villages in the same organization; while interest in the institution is increased by the continued active exercise of the purely democratic form of government.

The powers and influence of towns reach their maximum in Connecticut and Rhode Island. This is due in part to the historic independence of the older towns. In part it is due to the system of representation in the legislatures of these states, which gives the rural towns an excessive influence in their respective states, and at the same time enables the towns to secure a free hand in their own affairs. In Connecticut, "it is the belief and practice of the towns that they may exercise any authority not expressly delegated to some other part of the body politic." And "there is a tendency to regard the provisions of statutes that are permissive in form as not really conferring powers upon the towns—of these they are already possessed—but as calling attention to things desirable and as prescribing a uniformity of procedure that is of advantage."[2]

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[1] On the distinction between the town and the township see Eugene McQuillin, *Municipal Corporations* (2nd ed., 1928), vol. 1, pp. 240-44. See map, p. 109.

[2] C. H. Douglas, *The Civil Government of Connecticut,* pp. 59, 60.

In New England, the older towns continue to exercise peculiar local privileges, which exist as unwritten law. The town of Bristol had a controversy over the attempt to regulate the running of automobiles, on the ground that the tenure of highways in that town was different from that of other towns in the state.[3] Some years ago an attempt was made in the courts to secure legal recognition for the autonomy of the Rhode Island towns, on the basis of their historic position.[4] But the supreme court of the state—the judges of which are appointed by the legislature—upheld the authority of the state.[5] And the legal supremacy of the legislature seems to be clearly established in this state also.

The New England town is a quasi corporation. It is high in the scale of corporate life, however, and "so closely approximates the municipality as scarcely to be distinguishable from it in law."[6] Towns are instrumentalities of government,[7] "created for convenience in the administration of government."[8] As stated by the Supreme Court of New Hampshire, they are "component; parts of the state, and aggregately taken are the state."[9] They have been referred to by the Supreme Judicial Court of Maine as "mere agencies of the state,"[10] and by the Supreme Court of Vermont as "mere creatures of the Legislature constituted for governmental purposes."[11]

From this legal status of the town arises the principle of limited powers. Since they are mere agencies of the state and creatures of the legislature, they have "only such powers as have been conferred upon them by the state."[12] As pointed out by the Supreme Court of Errors of Connecticut, "towns, like other corporations, can exercise no powers except such as are necessary to enable them to discharge their duties and to carry into effect the objects and purposes of their creation.''[13] The Supreme Court of the United States has pointed out that towns in the New England states differ from the municipal corporation elsewhere. ''They are territorial corporations, into which the state is divided by the legislature, from time to time, at its discretion, for political purposes and the convenient administration of government; they have those powers only, which have been expressly conferred upon them by statute, or which are necessary for conducting municipal affairs.''[14]

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[3] Communication from Professor William MacDonald.

[4] Amasa M. Eaton, "The Right to Local Self-Government," 13 *Harvard Law Rev.* 441, 570, 638; *ibid.*, vol. 14, pp. 20, 116 (1900).

[5] *Newport v. Horton*, 22 R. I. 196 (1900).

[6] R. M. Cooley, *Municipal Corporations*, p. 496. Also see *Commonwealth v. Roxbury*, 9 Gray (Mass.) 451, note p. 511.

[7] *Boston and Maine R. R. v. Town of Greenfield*, 149 N.E. (Mass.) 322 (1925).

[8] *Howland v. Inhabitants of Town of Maynard*, 34 N.E. (Mass.) 515 (1893).

[9] *Wooster v. Plymouth*, 62 N.H. 193, 209 (1882.)

[10] *Sawyer v. Gilmore*, 83 Atl. (Me.) 673 (1912).

[11] *Town of New Haven v. Weston*, 86 Atl. (Vt.) 996 (1913). Also see *Sargent v. Clark*, 77 Atl. (Vt.) 337 (1910).

[12] *Town of Whitefield v. Dalton*, 112 Atl. (N. H.) 907 (1921).

As in the case of municipal corporations, the New England town has both a governmental and corporate capacity. The distinction between their corporate and governmental capacity has been stated by the Supreme Court of Maine as follows: ''The several towns in this state sustain the two-fold character of corporations and political divisions. So far as they may own and manage property, make contracts, sue and be sued, they are corporations: but, in matters pertaining to the preservation of the public health and peace, the making and repairing of highways and bridges, the support of the poor and the assessment and collection of taxes, they are political divisions, established and designed the better to enable the inhabitants to exercise and enjoy portions of the political power of the state.''[15] This distinction is of significance in determining the liability of the town for its acts. No action lies against a town for what is done by it in its governmental capacity; but ''in its corporate capacity as the owner of property held for its profit and advantage, the rights and liabilities of the town are measured strictly by the laws which determine all private rights and liabilities, and under the same conditions as a private corporation.''[16]

Towns are created by the state legislatures, which may divide, alter or consolidate existing towns, or establish cities, boroughs or other municipal corporations. In four of the New England states, the whole area has been organized into towns and cities, and in these states new towns are established only by the division of those already in existence. But in the northern regions of New Hampshire and Maine there are tracts of unsettled land as yet unorganized, where new towns are formed from time to time. In Maine, the new districts pass through a preliminary stage in which they are known as plantations, before they are fully organized as towns.

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[13] *Abendroth v. Town of Greenwich,* 29 Conn. 356, 363 (1860).

[14] *Bloomfield v. Charter Oak Nat'l Bank,* 121 U. S. 121 (1886).

[15] *Small v. Inhabitants of Danville,* 51 Me. 359 (1864).

[16] *Stanley v. Inhabitants of Town of Sangerville,* 109 Atl. (Me.) 189 (1920). Also see *Lockwood v. Dover,* 61 Atl. (N. H.) 32 (1905); *Wheeler v. Town of Gilsum,* 62 Atl. (N. H.) 597 (1905); *Brown v. Inhabitants of Vinalhaven,* 65 Me. 402 (1876); *Oliver v. Worcester,* 102 Mass. 489 (1869).

New England towns, for the most part, are irregular in form and usually contain from twenty to forty square miles. In the northern part of Maine the rectangular survey into townships six miles square has been followed, but this is distinctly different from other parts of New England. Most of the towns are predominantly rural in character, but all have one or more ''villages,'' where houses are more compactly built, and in many cases towns are at least semi-urban and some can be classed as small urban communities.

In population these towns show large variations. The larger places have been incorporated as cities, and in Massachusetts, Connecticut, and Rhode Island the cities now contain more than half the population of these states. Generally the city government absorbs the town government, but in Connecticut the town organization is separately maintained even in the case of the largest cities. Thus the town of New Haven has over 160,000 population, the town of Bridgeport 143,000, and the town of Hartford 138,000.

Besides these exceptional cases, there are a number of towns of considerable size. Sixteen towns in Massachusetts and three in Rhode Island had over 12,000 inhabitants each in 1920. Nine other towns in Massachusetts and two in Rhode Island had over 10,000 each. About eighty towns scattered through all the New England states had from 5,000 to 10,000 population.

Moreover most of these towns have no separate government for the villages, and the semi-urban and rural portions of the towns alike come under the control of the town government. Indeed in Massachusetts, and Rhode Island, the term village has no legal significance, and is simply used for the more compactly built section of the town. In other states there are a number of villages or boroughs incorporated within these larger towns.

Smaller towns are more numerous. Altogether there are about 1,400 towns of less than 5,000 inhabitants, with an aggregate population in 1920 of 1,800,000. Here, too, the town government nearly always includes the villages, but there are about 120 separately organized villages, most of them in Vermont.[17] Thus the New England town performs the functions of both township and of village government in states further west. And this combination adds much to the importance of town government.

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[17] Maine had 24 incorporated villages in 1920; Connecticut 21 boroughs; Vermont 71 villages; and New Hampshire 2 villages. In some cases special districts for particular purposes have been organized for some towns.

TOWN FUNCTIONS

The functions and powers exercised by these town governments are manifold and varied. A Massachusetts manual of town law enumerates nearly fifty general subjects on which towns may act.[18] The most important are roads and drains, schools, poor relief, and taxation for the different local purposes. But to the simple requirements of the colonial towns in these fields, the modern New England town adds the construction and maintenance of street pavements, sewers, water-works, electric light plants, public baths, parks, libraries, high schools, hospitals, and other public works and institutions.[19] They have also power to enact police ordinances and by-laws. In Massachusetts town by-laws must be approved by the attorney general. In Rhode Island and Connecticut, the town is also the authority for land records, and in Rhode Island for probate matters.

In addition to their local functions, the town officers are more and more called on to act as agents of the state government in performing duties imposed on them by the legislature. They assess and collect state taxes; they keep records of vital statistics; they enforce state health laws; and they perform many other important functions. Except in Maine, the towns are the usual districts for electing members to the state legislature,[20] and in all the New England states they are election districts for state and national elections.

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[18] Austin DeWolf, *The Town Meeting*, ch. 9.

[19] Thus the enumerated purposes for which money may be voted at a town meeting in New Hampshire will indicate the scope of the functions of a New England town. Towns may grant and vote money at the town meeting for the following purposes: for the support of schools; to maintain the poor; to lay out, build and repair roads and bridges; to light streets; to repair meeting houses; to aid hospitals; to obtain free hospital beds for indigent persons; to aid nursing; to encourage voluntary enlistments in case of war; to establish monuments and memorials for soldiers and sailors; to defray the expenses of decorating the graves of soldiers and sailors on memorial day; to provide armories; to provide for the extinguishment of fires; to establish and maintain public libraries; to establish and maintain parks and cemeteries; to acquire, set out and maintain shade trees; to establish and maintain playgrounds; to aid free public band concerts; to issue circulars and other printed matter advertising the resources and natural advantages of the town; to prepare and publish history of the town; to defray the expenses of old home week; to maintain and record weather observations; to support a resident physician where the town would otherwise be without such physician; to procure the apprehension of persons committing felonies; to limit the ravages of and if possible to exterminate the brown tail moth; to employ counsel to prevent the proposed abandonment of any railroad in the town; and to defray all necessary charges arising within the town. *Public Laws of New Hampshire*, 1926, vol. 1, pp. 180-182. Also see: *Rev. Statutes Me.*, 1916, pp. 94-98; *Gen. Laws Mass.*, 1921, ch. 40, sec. 5; *Gen. Laws R. I.*, 1923, p. 267; *Gen. Laws Vt.*, 1917, sec. 4030-4037; *Gen. Statutes of Conn., Revision of 1918*, sec. 411-495.

In connection with these matters, and also with much of the business usually considered local (such as schools and poor relief), the state laws require the town officers to act. In case of neglect, the state courts will issue various writs to compel obedience to the law, and sometimes town officers may be removed for neglect of duties imposed.

The system of organization established in all the New England states for the exercise of their various powers is almost identical. The principle authority is the town meeting, or primary assembly of the electors in each town. For executive work there is a long list of elective officials. The most important are the selectmen, the town clerk, and the school committee.

TOWN MEETINGS [21]

A town meeting is an assembly, duly summoned, of the qualified voters in the town, which elects officers, makes appropriations, levies taxes and passes local legislative measures. An annual meeting is held in each town in the spring months, except in Connecticut, where this meeting generally comes in October.

Attendance at these meetings usually includes a good proportion of the voters. Some of those who come to vote for officers do not remain for the business sessions; but a fair number is present during the latter proceedings. Sometimes the business session is adjourned to a later day. In the large towns the relative attendance is somewhat less than in small towns, but even in the former an active interest is maintained. A survey made some years ago showed that in Brookline, Massachusetts, with about 2,500 votes cast, there were from 300 to 500 at the business sessions. In Hyde Park, Massachusetts, with 2,500 voters, and 1,500 votes cast, from 500 to 600 attended the annual appropriation meeting. In Leominster, Massachusetts, with 1,400 voting, the normal attendance was about 800.[22]

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[20] In Massachusetts and New Hampshire small towns are sometimes united to form a legislative district.

[21] See: *Public Laws New Hampshire,* 1926, vol. 1, p. 200; *General Laws of Mass.,* 1921, vol. 1, ch. 39; *General Laws of Vt.,* 1917, sec. 3917; *General Laws of R. I.,* 1923, chs. 48-50; *Gen. Stat. of Conn., Rev. of 1918,* secs. 248-288.

Meetings are usually held in a large town hall. This is frequently in the village, but in some towns with several villages it is erected near the geographical center of the town, sometimes a mile or two from any village.

The meeting is called to order by the town clerk, or, in his absence, by one of the selectmen, and proceedings begin with the election of a moderator as presiding officer. In many towns the same man is chosen year after year to this office. This action serves to make the town meeting, in form at least, free from the control of the town officers, whom it is supposed to supervise. The town clerk, however, acts as secretary of the meeting.

An organization being effected in the morning, the polls are opened and the election for the principal town officers proceeds by secret ballot. The business sessions usually begin early in the afternoon, before the polls are closed; but in some of the large towns these are held in the evening. At the annual meeting one or more adjourned sessions are usually necessary to transact all the business in the warrant.

An examination of town meeting warrants and reports of proceedings in several towns thirty years ago and in recent years shows a good many common features, but also some significant changes.[23] At both periods are to be found the election of officers, the more important by ballot and others viva voce, receiving the reports of town officers, voting on the annual appropriations and special items, authority to borrow money, street, water-main and sewer improvements, school buildings, and amendments to the town bylaws. Thirty years ago an important question was whether to license the sale of liquors, and proposals for a new lighting contract or for the establishment of a municipal lighting plant might be presented. In recent years novel items are those relating to zoning ordinances, town planning, junior high schools, and traffic signals. The number of items for consideration at the annual town meeting will range from twenty to fifty or more.

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[22] Data furnished by Professor George H. Haynes of Worcester Polytechnic Institute. Towns may prescribe by law the number of legal voters to constitute a quorum, either a certain per cent or a specified number (25, 50, or 75). John F. Sly, *Town Government in Massachusetts* (1930), p. 148.

[23] J. A. Fairlie: *Local Government in Counties, Towns and Villages*, p. 150; The Annual Report of the Officers of the Town of Concord, Mass., for the year . . . 1927; Annual Report of the Officers of the Town of Needham, Mass., for the year . . . 1927. See extracts from proceedings at end of the chapter.

At intervals a special town meeting may be called to consider one or more matters of importance. The warrant for one such meeting called in Reading, Mass., in 1905, specified seven items of business, including a proposal for a new high school, measures for exterminating the gypsy moth, and changes in the water rates and building laws. A recent special meeting in Needham, Mass., was to act on proposed water main extensions and the issue of bonds.

Most of the items on the town meeting warrant will be adopted or approved by a viva voce vote without dissent. Some will be dismissed by a similar expression; while on a few items the vote may be counted and recorded.

> "The thing most characteristic of a town meeting is the lively and educating debate; for attendants on town meetings from year to year become skilled in parliamentary law, and effective in sharp, quick argument on their feet. Children and others than voters are allowed to be present as spectators. In every such assembly, four or five men ordinarily do half of the talking, but anybody has a right to make suggestions or propose amendments and occasionally even a non-voter is allowed to make a statement; and the debate is often very effective."[24]

In some places the town meeting has been undermined by the caucus, held beforehand, to nominate candidates for office. Here a small group of persons not only narrow the choice for officers but often arrange for other business to be determined at the town meeting. Sometimes everything is ''cut and dried'' before it comes up for popular discussion; and that discussion thus becomes a mere formality.[25] The need for preliminary consideration by smaller groups than the town meeting has come to be recognized by the appointment of committees to examine the appropriations and make recommendations; and this practise has recently been placed on a statutory basis in Connecticut and Massachusetts. In Connecticut, boards of finance are provided, composed of six members elected at the town meeting. The first selectman is also a member ex officio of the board, but votes only in case of a tie. It is the duty of this board to prepare the town budget. After a public hearing this is presented at the town meeting. The town meeting can make no appropriation exceeding in amount that recommended for the same purpose by the finance board, and no appropriation can be made for any purpose not recommended by the board.[26] Massachusetts now authorizes the use of advisory committees, of ten to forty members, appointed by the moderator to go over the warrant before the town meeting and make recommendations; and requires such committees in towns with a valuation of more than one million dollars.[27]

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[24] A. B. Hart, *Actual Government*, p. 171; cf. *The Nation*, vol. 56, p. 343; vol. 60, p. 197. John F. Sly, *Town Government in Massachusetts* (1930), pp. 147-8.

[25] On this question see Edwin A. Cottrell, ''Recent Changes in Town Government,'' 6 *Nat. Mun. Rev.* 64 (1917).

Other factors have also altered the working of town government. Immigration from Europe and French Canada has introduced in some towns racial elements that do not harmonize with the old New England stock. And these disturbing groups are most numerous in towns where factories and other industrial pursuits have developed, emphasizing social distinctions between employees and capitalists that were lacking in farming communities.[28] Even in rural towns the influx of summer visitors, although without votes, gives rise to disagreements between the new-comers and the older inhabitants. As stated by one writer on the subject: ''Local interest, geographical situation, the changing character of population and industries, the influx of foreign elements, the centralization of financial, health and educational powers in the state, and principally the rapid increase in population, have all tended to make the old system unsatisfactory and more complex.''[29]

While the town meeting retains its hold on the people of New England, the increase in the population of many towns has forced to the front the question of some modification in the town meeting. Only a small part of the voters can be admitted to the town hall, and while it accommodates all who usually attend, there have been occasions in some towns when the hall has been filled and many voters turned away. Under these conditions decisions may be made that are disapproved by a majority of those who sought to attend, while in such large gatherings debate and deliberation become impossible.

In order to meet this situation provision has been made in some of the larger towns for a limited town meeting. Brookline, Massachusetts, with a population of 37,000 in 1920, was the first to adopt this plan. An act of 1915 divided the town into nine voting precincts and provided for the election of twenty-seven members of the limited town meeting from each. This made a body of 243 members, and to these twenty ex officio members were added.[30] Fourteen other towns have established such limited town meetings.[31] The towns which use the limited town meeting are said to be "generally satisfied with the new experiment." This principle will probably be extended to the other more populous towns in the future.

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[26] *Gen. Stat. of Conn., Rev. of 1918,* secs. 397-407.

[27] *Gen. Laws of Mass.,* 1921, vol. 1, ch. 39, sec. 16; *Acts of 1923,* ch. 388.

[28] C. F. Adams, *Three Episodes of Massachusetts History,* pp. 965-974.

[29] Edwin A. Cottrell, 6 *Nat. Mun. Rev.,* 64-69 (1917).

TOWN OFFICERS

Most important among the town officers is the committee or board known as the selectmen,[32] or (in Rhode Island) the town council. The number of selectmen varies from three to nine, three being the more frequent. Generally they are elected annually, but in Massachusetts they are sometimes chosen for three years, retiring in rotation so that one or more is elected each year. Reelections are frequent, and one selectman in Brookline, Massachusetts, occupied the position from 1867 to 1905.

In most cases there is no one officer with any special powers as chief executive. In Connecticut, however, of the persons elected selectmen by any town, the person first named on a plurality of ballots is first selectman, and in the absence of a special appointment is ex officio the agent of the town.[33] Any town in that state having a board of finance [34] may also appoint a town manager to perform the duties and exercise the powers of selectman. He is appointed by the selectmen of the town upon nomination of the board of finance for a term of three years; but he may be removed by the board after public hearing before the end of his term.[35]

Towns in Vermont may also provide for a town manager who is subject to the selection and supervision of the selectmen. He becomes general manager of the town and has "general supervision" of its affairs and is administrative head of the town government and "responsible for the efficient administration thereof."[36] Only a small number of the 248 towns in Vermont have provided for town managers. It was stated after the first year that the manager plan there had resulted in a saving of money, and that the results obtained in more efficient administration and plans for future development indicated the success of the plan.[37]

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[30] Edwin A. Cottrell, 6 *Nat. Mun. Rev.*, 67 (1917).

[31] John F. Sly, *Town Government in Massachusetts*, ch. 7. Cf. 15 *Nat. Mun. Rev.*, 444, 686 (1926). These are more populous towns, mostly over 10,000; but by constitutional amendment in 1926 this method is applicable to towns of over 6,000.

[32] The native New Englander accents the first and last syllables; and an outsider is readily detected by his dictionary pronunciation.

[33] *Gen. Stat. of Conn., Rev. of 1918*, sec. 271.

[34] See *supra*, p. 432.

[35] *Gen. Stat. of Conn., Rev. of 1918*, secs. 408-410.

Town managers have also been provided in four Massachusetts towns. Other towns in this state have provided for boards of public works or have consolidated administrative functions in the selectmen.[38]

The selectmen may be called the general administrative board of the town. But they differ from county boards in having no authority to levy taxes, and their powers are limited to those conferred by statute or the town meeting. Their functions are manifold and vary from town to town. They issue warrants for holding a town meeting; they lay out highways and drains; they grant licenses; they make arrangements for elections; and they have charge of the town property. They may act as assessors, overseers of the poor, and health officers. They appoint some minor town officers; and can fill vacancies in most of the elective town offices.[39] They adjust claims against the town and draw orders on the treasurer for payment.

In Rhode Island, the town councils also exercise jurisdiction in probating wills and granting letters of administration. They submit an annual report of their actions to the town meeting.[40]

Some dissatisfaction with the work of the board of selectmen has developed. It has been pointed out that the most desirable persons are not elected to the position of selectmen. As summarized by one writer on the subject, in too many cases, "this board has too often been of the professional political element and bureaucratic in operation."[41] With the increase in the functions performed there is need for some full time officer to supervise the administrative work of the town. The provision for a town manager aims at this problem, which has been discussed above.

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[36] *Gen. Laws of Vt.*, 1917, secs. 4053-4057.

[37] Edwin A. Cottrell, *op. cit.*, 6 *Nat. Mun. Rev.*, 64-69 (1917).

[38] John F. Sly, *Town Government in Massachusetts*, ch. 8.

[39] In New Hampshire, in case of a vacancy on the board of selectmen, the other members must choose some one who has previously held the office by election; and where there are only two selectmen who fail to agree on a person for the vacancy, the appointment is made by a judge of the Supreme Court.

[40] *Gen. Laws of R. I.*, 1923, sec. 5319.

[41] Edwin A. Cottrell, *op. cit.*, pp. 64-65.

Next in importance to the selectmen is the town clerk, who performs some duties imposed on the county clerk in states outside of New England. He keeps the record of the proceedings at the town meeting, and has general charge of the town archives. He issues marriage licenses and registers births, marriages and deaths. In Connecticut and Rhode Island he is a recorder of deeds, mortgages and other conveyances affecting title to land, as well as other legal documents; and in Maine he keeps a record of bills of sale and mortgages on personal property.[42]

Although elected for only a year at a time, the town clerk is likely to be continued in office for a long period. One town clerk in Brookline served from 1852 to 1898; and a town clerk of Hyde Park, Massachusetts, held the position from 1870 until after 1906. Evidently the New England town democracy appreciates the advantages of permanent tenure for this non-political office.

Assessors of taxes are elected in the larger towns, where the duties of the selectmen are considered too onerous. The duties of these officers, and of the selectmen where they act as assessors, are to value real estate and personal property, and to assess the taxes levied by the town meeting and for state and county purposes.

The town treasurer receives and has charge of the money collected by taxes, for state, county and town purposes, and also of other funds belonging to the town. He forwards the state and county taxes to the proper officers, and makes payments for town expenses on orders signed by the selectmen. He keeps accounts of receipts and disbursements, and makes an annual report to the town meeting, which is subject to examination and audit.

Overseers of the poor may also be elected. These, or the selectmen acting as such, look after town paupers and supervise the management of the town almshouse or workhouse, where such institutions are maintained. The recent tendency is towards the centralization of poor relief. Besides the development of state charitable institutions for special classes, in New Hampshire county almshouses have regularly been established, and in Massachusetts it has become common for several neighboring towns to unite in maintaining a single almshouse. These steps secure greater economy and also more intelligent treatment in the work of poor relief.

[42] *Gen. Laws of R. I.*, 1923, sec. 782; *Rev. Stat. of Me.*, 1916, p. 1307; *Gen. Stat. of Conn., Rev. of 1918*, secs. 5091 ff.

Justices of the peace are not considered as town officers in New England, but in New Hampshire, Vermont, Connecticut, and Rhode Island they are elected by the towns. In Massachusetts and Maine they are appointed by the governor and council, and in Rhode Island the governor appoints justices in addition to those elected in the towns.[43]

In the three states where the system of appointment is used, the ordinary justices are not in fact judges. They summon witnesses and hold preliminary inquiries in criminal cases, and commit accused persons for trial before a judicial court. And they may perform the marriage ceremony, and take acknowledgment of deeds. Trial or district justices are, however, appointed, usually for more than one town, to try the minor civil and criminal cases.

In Connecticut, New Hampshire and Vermont, the elected justices exercise limited judicial powers. Their jurisdiction in civil cases is restricted to suits where the amount in controversy is small, the exact amount varying in the different states. In criminal cases their jurisdiction applies to minor misdemeanors enumerated in the statutes, or limited by the penalty imposed. None of the New England states gives the justices any active part in other branches of. local administration, such as they exercise in many of the Southern states and sometimes in the Central and Western states.

The constable is an elective officer, but he has lost his old dignity and importance as the head official of the town. Constables are the peace officers of the town, corresponding to the sheriff in the county, it being their duty to arrest violators of the law. But in practise they act mainly as ministerial officers to execute the writs and warrants of selectmen, justices of the peace, and sometimes other judges. In some cases they act as collectors of taxes.

No county school officers are found in the six New England states.[44] A school committee or school-board is elected in every town. In five of the New England states, and in most towns in Connecticut, the town committee has direct control of all the town schools.[45]

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[43] *Const. of R. I.*, Art. X; *Gen. Laws of R. I.*, 1923, sec. 385; *Const. of Me.*, Art. V, sec. 8; *Gen. Laws of Mass.*, 1921, vol. 2, ch. 222, sec. 1; *Const. of Mass.*, Art. 123.

[44] W. A. Cook, *Federal and State School Administration*, ch. 9. *Rev. Stat. of Me.*, 1916, ch. 16, secs. 32 ff.

[45] *Gen. Laws of Mass.*, 1921, vol. 1, ch. 71; *Gen. Stat. of Conn., Rev. of 1918*, secs. 979 ff.; *Gen. Laws of Vt.*, 1917, secs. 1183 ff.; *Public Laws of N. H.*, 1926, vol. 1, ch. 117; *Gen. Laws of R. I.*, 1923, sec. 965.

It establishes schools, appoints teachers, and regulates the course of instruction. Supervisory districts made up usually of several towns have been established. In Connecticut one to five towns comprise a supervisory district. Massachusetts, New Hampshire, and Maine use a similar plan. The combination of towns into supervisory districts is decided by the state board of education in Vermont. Truant officers are also appointed to enforce attendance on the schools.

In Connecticut, the towns may be divided into small school districts each containing a single school. The schools are under the management of trustees elected by the inhabitants of the district, while taxes are voted by a district meeting of the voters. Formerly this district system was in general use, and marks the furthest development of decentralized administration in the United States. But this system has been gradually abandoned in favor of the town unit of control,—only nine towns retaining the district system in 1922.[46]

Recent tendencies are towards further centralization in school administration. Small schools in outlying districts are abandoned, and the pupils are taken at public expense to a central town school, where a more efficient graded system of instruction can be maintained. The situation in Connecticut may be taken as illustrative of the movement towards consolidation. While there were 1,486 one room schools in that state in 1860, this had been reduced to 1,077 in 1900 and to 613 in 1923. By 1925, all of the schools of six towns had been centralized in one district; in fifty-eight towns the pupils were being transported from smaller one room schools which had been closed to larger one and two room schools; in twenty-five towns the pupils in the two upper grades were being brought into one, or at the most two, district schools of the town; and in thirty-eight towns partial consolidation had been carried out by a central residential district absorbing the small schools of the vicinity and the upper grades of the remote sections.[47]

Highway officers with various titles are regularly elected in each town in Massachusetts, New Hampshire, and Vermont.[48] In Connecticut, the selectmen are the general agents of the town to repair highways; in Rhode Island, the town council divides the town into highway districts (or they may constitute the town into one such district) and elect one surveyor of highways for each district; and in Maine, the selectmen annually choose a road commissioner for the town.[49] In recent years a great deal of attention has been given to the construction of substantial roads; and in this work the towns have been aided by the county and state authorities.

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[46] *Gen. Stat. of Conn., Rev. of 1918,* secs. 979, 988; A. B. Meredith, *Report of State Board of Education, Connecticut,* 1922, p. 71.

[47] E. L. Larson, *One-Room and Consolidated Schools of Connecticut* (1925).

[48] *Gen. Laws of Vt.,* 1917, sec. 3925; *Gen. Laws of Mass.,* 1921, vol. 1, ch. 41, sec. 1; *Pubiic Laws of N. H.,* 1926, vol. 1, p. 318.

Park commissioners, library trustees and boards of health are elected in many towns; and in large towns watchmen are appointed as a police force, and a fire brigade is organized. There is also a long list of old minor officers, some elected, but most of them now appointed by the selectmen. These include sealers of weights and measures, field drivers, pound keepers, fence viewers, surveyors of lumber, keepers of almshouses, forest fire-wards, fish wardens, inspectors, weighers and measurers of grain, oil, upper leather, beef, boilers, coal, lime, vessels, and many other officers.[50]

Most of these functionaries serve without compensation or receive only trifling fees, and this is an important factor in explaining the multiplication of insignificant places. But another factor is doubtless the craving for public position; and in small towns a large proportion of the voters can be given some titular honor. Popular election, which is still employed for a large number of offices, seems to work more satisfactorily in small towns than in more populous districts. The voters are personally acquainted with the various candidates, and the town meeting provides a means for supervising the conduct of the officers. But in the larger towns difficulties arise. Many of the officials who no longer perform any active functions might well be abolished. And there is room for extending the domain of technical expert service, which it is difficult to secure under a system of popular election.

While the town retains an important position, the tendency is towards larger areas of local administration and state supervision of the local authorities. This movement is noticeable in school management, public charities, sanitary affairs and most recently in road building. It is being realized that greater efficiency can be secured through the employment of well-paid officials with specialized technical training, than under the unpaid decentralized methods. And in this respect the recent tendencies in New England are but a phase of the general movement throughout the United States and the world away from the radical decentralizing ideas of the first half of the nineteenth century.[51]

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[49] *Gen. Laws of R. I.*, 1923, sec. 1365; *Rev. Stat. of Me.*, 1916, ch. 4, sec. 16; *Gen. Stat. of Conn., Rev. of 1918*, secs. 1406 ff.

[50] For list of town officers in a New England town see: *Public Laws New Hampshire*, 1921, pp. 203-209; *General Laws Rhode Island*, 1923, p. 267.

TOWN FINANCES

The importance of town government is indicated in some respects by the scale of its financial transactions. According to the census reports for 1922, the tax levies of New England towns were about three times the state property taxes, about the same as the total general state revenues, and ten times the county taxes in these states. In the Middle-Atlantic and North Central states, town and township taxes were only about two-thirds of the state property taxes and about one-third of the county taxes.

More specific data as to Massachusetts towns is shown in the tables following, summarizing the reports on the statistics of municipal finances by the Massachusetts Department of Corporations and Taxation. It will be noted that the total revenue and ordinary expenditure has increased about four times from 1910 to 1927. The principal source of revenue is the general property tax, though considerable sums are also received from public service enterprises and departmental charges, revenue from public service enterprises being relatively of more importance in the larger towns.

Expenditures for schools form the largest item, with those on highways ranking next; and expenditures for these purposes and for cemeteries are relatively larger in the smaller towns. On the other hand, expenditures for protection, health and sanitation and public service enterprises are relatively higher in the larger towns. The total maintenance expenditure is about the same per capita for smaller and larger towns, which often requires a somewhat larger tax rate in the smaller places.

The aggregate debt of the Massachusetts towns about doubled from 1910 to 1927, and for the smaller towns has more than doubled. Debt for public service enterprises has been reduced for the larger towns; and the percentage of total debt to assessed valuation has been appreciably reduced.

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[51] *Cf.* Dicey, *Law and Public Opinion in England.*

SUMMARY OF FINANCIAL TRANSACTIONS, MASSACHUSETTS TOWNS *

Aggregate Receipts

Years ending between Nov. 30, 1927, and March 31, 1928

	79 towns over 5,000 (aggregate pop. 828,467)	*237 towns under 5,000 (aggregate pop. 405,971)*
Taxes	$39,243,580.	$17,302,277.
Licenses and permits	89,083.	40,801.
Fines and forfeits	110,505.	66,102.
Grants and gifts	475,947.	1,952,399.
All other revenue	927.	1,477.
Total general revenue	$39,920,045.	$19,363,058.
Special assessments	416,269.	50,774.
Privileges	4,480.	13,299.
Departmental revenue	1,374,918.	692,999.
Public service enterprises	5,949,584.	1,076,613.
Cemeteries	200,619.	82,855.
Interest	724,459.	448,768.
Total commercial	8,670,331.	2,365,310.
Total revenue	48,590,377.	21,728,369.
Offsets to outlays	951,836.	1,649,804.
Municipal debt	31,923,956.	13,943,251.
Transfers	511,252.	253,130.
Refunds	114,530.	77,348.
Agency, trust, and investment	5,524,656.	2,905,445.
Total non revenue	39,026,231.	18,828,981.
Total receipts	$87,616,608.	$40,557,350.

1910

	(71 towns)	*(176 towns)*
General revenue	$10,535,550.	$ 4,081,086.
Commercial revenue	3,378,338.	822,311.
Municipal debt	7,810,948.	2,141,635.
Transfer, refunds and offsets	1,793,098.	557,974.
Agency, trust, and investment	1,729,839.	844,647.
Total	$25,297,976.	$ 8,447,256.

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* From *Fifth* and *Twenty-Second Annual Reports on the Statistics of Municipal Finances,* Massachusetts Department of Corporations and Taxation.

Aggregate Payments, 1928 *

	79 towns over 5,000 (aggregate pop. 828,467)	*237 towns under 5,000 (aggregate pop. 405,971)*
General government	$ 1,961,631.	$ 1,178,969.
Protection	4,573,210.	1,420,006.
Health and sanitation	2,336,236.	592,045.
Highways	5,360,326.	4,200,374.
Charities	1,946,723.	889,200.
Soldiers' benefits	196,684.	84,553.
Schools	13,414,916.	7,202,457.
Libraries	641,788.	275,562.
Recreation	703,058.	134,966.
Pensions	94,272.	4,616.
Unclassified	505,669.	281,654.
Total departmental	31,734,518.	16,264,407.
Public service enterprises	3,816,943.	729,358.
Cemeteries	290,806.	166,513.
Administration trust funds	5,524.	3,960.
Total maintenance	35,847,792.	17,164,240.
Interest	2,519,135.	667,089.
Outlays	13,106,943.	6,431,092.
Municipal debt	29,967,325.	12,543,999.
Transfers	511,252.	253,130.
Refunds	114,530.	77,348.
Agency, trust, and investment	5,392,951.	2,889,284.
Total payments	$87,459,930.	$40,026,185.

Aggregate Municipal Indebtedness, Massachusetts Towns †

Towns over 5,000 population

	Gross debt	*Sinking fund*	*Net debt*	*% of Assd. Val.*
General debt, 1910	$12,872,337	$ 705,545	$12,166,792	1.89
1927	32,076,122	713,296	31,362,826	2.44
Enterprise debt, 1910	$12,071,146	$1,940,991	$10,130,155	1.58
1927	7,962,514	756,852	7,205,662	.56

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* Compiled from *Twenty-Second Annual Report on the Statistics of Municipal Finances,* Massachusetts Department of Corporations and Taxation.

† Compiled from *Fifth* and *Twenty-Second Annual Reports on the Statistics of Municipal Finances,* Massachusetts Department of Corporations and Taxation.

Towns under 5,000 population

General debt, 1910.......	$ 3,268,382	$ 217,885	$ 3,050,497	.77
1927.......	7,041,777	19,323	7,022,454	1.15
Enterprise debt, 1910....	$ 3,081,857	$ 313,821	$ 2,768,036	.70
1927....	3,549,184	173,975	3,375,209	.55

TOWN MEETING RECORDS

CONCORD, MASS., TOWN REPORT 1927
PROCEEDINGS OF THE ANNUAL TOWN MEETING

Held February 28, 1927

Article 1: To choose all necessary Town officers and committees.

The following Town officers were elected on one ballot:

Moderator for One Year—Prescott Keyes
Town Clerk for One Year—William D. Cross
Selectman for Three Years—John Bordman
Assessor for Three Years—James L. Adams
Overseer of the Poor for Three Years—George E. Jones
Treasurer for One Year—Herbert S. Townsend
Auditor for One Year—Chilton Cabot
Collector of Taxes for One Year—Herbert W. Hosmer
Constables for One Year—Silas A. Bean, John J. Dee, James E. Finnan, William G. Ryan
Road Commissioner for Three Years—Edward W. Sheehan
School Committee for Three Years—Kennan Damon, Warren B. Goddard, Thomas J. Powers
Water and Sewer Commissioner for Three Years—Samuel Hoar
Board of Health for Three Years—Ross K. Whilton
Municipal Light Board for Three Years—Wallace B. Conant
Tree Warden for One Year—Henry P. Richardson

A true record.

Attest: William D. Cross, Town Clerk.

PROCEEDINGS OF THE ANNUAL TOWN MEETING

Held March 7, 1927.

The Annual Town Meeting was held at 7:30 o'clock P.M., March 7, 1927, in the Veterans Building, and was dissolved at 11:30 P.M. The several articles in the warrant were acted upon as follows:

Article 1. To choose all necessary Town officers and committees.

The following Town officers and committees were elected by acclamation:

Library Committee—Charles Francis Adams, Gail Cleland, Allen French, Bessie K. Hudson, Edward F. Loughlin
Sleepy Hollow Cemetery Committee—Chilton Cabot, Raymond Emerson, Henry F. Smith, Jr.
Pound Keeper—Peter Peterson
Fence Viewers—George E. Jones, Leonard C. Robinson, Raymond Wheeler
Field Drivers—John M. Bruce, William Foss, George E. Jones
Measurers of Lumber—Kennan Damon, Fred E. Hewitt, Gordon Hutchins
Measurers of Wood and Bark—Isaac R. Beharrell, Kennan Damon, Fred E. Hewitt, Gordon Hutchins, Thomas A. Wilson

Article 2.

Voted, that the Reports of the Town officers and committees and of the Trustees of the Concord Free Public Library, as submitted in the last Annual Town Report, be hereby accepted.

Arts. 3 and 4.

Voted, that Articles 3 and 4 be taken up together.

Voted, that the dog license money refunded by the County Treasurer for the year 1926 be transferred and appropriated to the use of the Free Public Library.

The Moderator appointed the following to serve on the Finance Committee for a term of three years: Abbott Allen, Edwin D. Brooks, John W. Mara, Wisner I. Park, C. Hayden Whitney.

Voted, that the Moderator appoint a committee of seven to carry out the development of the Emerson Playground and the Percy A. Rideout Playground and to have charge of the expenditures therefor. Committee appointed: John M. Keyes, Oscar E. Beckvold, Wells A. Hall, John J. Connorton, Edward F. Loughlin, Edward W. Sheehan, T. Alfred Wilson.

Voted, that the Town approve the continuance for a further period not exceeding ten years, of the policy approved at its annual meeting April 6, 1914, relative to appropriating for maintenance and care of the Library sums equal to the respective amounts expended by the Corporation for water, light and fuel for the preceding year.

Voted, that the sum of $1,373.27, being the amount expended by the Corporation for water, light and fuel in 1926, be appropriated and paid to the Corporation for maintenance and care of the Library and its West Concord Branch during the year 1927.

Voted, that such sums of money be added to the salaries of the Town Treasurer, Collector of Taxes, and Town Clerk as will enable them to procure such company as surety on their respective official bonds as may be approved by the Selectmen, and that the premiums on such bonds be paid from the General Expense Account.

Voted, that the balance of $3,066.39 remaining in the Operation and

Maintenance Account of the Water Works be appropriated to said account for use in the year 1927.

Voted, that the sum of $12,000.00 be appropriated for fire hydrant service and carried to Maintenance Account of the Water Works.

Voted, that the balance of $3,414.12 remaining in Operation and Maintenance Account and of $181.97 in the Particular Sewer Account of the Sewerage Works, be appropriated to said accounts for use in the year 1927.

Voted, that the sum of $11,000.00 be appropriated from the surplus revenues of the Water Works during the current year, for the construction, maintenance and operation of the sewerage works and for the payment of interest and sinking fund requirements on sewer loans.

Voted, that the following sums of money be granted and appropriated for the following purposes and that the same be assessed on the polls and property of the Town of Concord and all other persons liable to be taxed within the year 1927:

1. Support of Schools	
a. For the year 1927	$134,400.00
b. Serial notes maturing in 1927	7,000.00
2. Roads and Bridges	
b. Drain Construction	3,000.00
c. Cambridge Turnpike Overdraft	2,572.66
d. General Maintenance	63,525.00
e. Serial notes maturing in 1927	12,000.00
f. Garbage Collection and Disposal	3,000.00
3. Municipal Light for Street Lighting, 1927	16,000.00
4. Fire Department	
a. Maintenance and salaries for Year 1927	15,000.00
b. Serial note due in 1927	1,000.00
5. General Expense	
a. For the year 1927	14,500.00
6. Police Department	
a. For the year 1927	18,400.00
b. Signal system	2,500.00
8. Workmen's Compensation Account	
For payment of liability incurred in 1926 by the Roads and Bridges and Municipal Light Departments	151.35
9. Assessors' Department	
a. For the year 1927	2,450.00
10. Support of Poor	
a. For the year 1927	4,600.00
11. Public Library	
a. Salaries for 1927	7,075.00
b. Branch Library	500.00
c. Water, light and fuel	1,373.27
d. One dollar each for the ratable polls for 1926	1,922.00
12. Cemetery Department	
a. For the year 1927	1,500.00

13. Care of Trees	
a. For the year 1927	$ 1,500.00
14. Board of Health	
a. For the year 1927	3,785.00
15. Nineteenth of April Celebration	
a. For the year 1927	300.00
16. Gypsy and Brown-Tail Moths	
a. For the year 1927	900.00
17. Water Works for Fire Hydrant Service, 1927	12,000.00
18. Town Debt and Interest Account	
a. For the year 1927	1,000.00
19. Middlesex County Extension Service, 1927	300.00
20. Zoning	1,500.00
21. Road Department	
a. Emerson and Percy A. Rideout Playgrounds	5,000.00
22. Grading Library Lot at Concord Junction	200.00
24. Road Department	
a. Pine Street Extension	3,000.00
Total amount appropriated	$341,954.28

Art. 5. To determine whether the Town will authorize the Treasurer to borrow money with the approval of the Selectmen in anticipation of the revenue of the current fiscal year.

Voted, that the Town Treasurer, with the approval of the Selectmen, be and hereby is authorized to borrow money from time to time in anticipation of the revenue of the current fiscal year beginning January 1, 1927, and to issue a note or notes therefor payable within one year. Any debt or debts incurred under this vote shall be paid from the revenue of said fiscal year.

Art. 6. To determine whether the Town will appropriate for the several departments in addition to all other appropriations therefor all sums receivable or received directly by the Town Treasurer as the result of services rendered or property sold by said departments.

Voted, that there be appropriated for the several departments in addition to all other appropriations therefor, all sums receivable or received directly by the Town Treasurer as a result of services rendered or properly sold by said departments.

Art. 7. To determine whether the Town will appropriate for the several departments in addition to all other appropriations therefor the unexpended balances standing to the credit of said departments as of December 31, 1926.

Voted, that all unexpended balances standing to the credit of the several departments as of December 31, 1926, be appropriated to said departments in addition to all other appropriations therefor.

Art. 8. To determine the conditions and restrictions under which the overlay reserve fund may be expended.

Voted, that the whole or any part of the amount in any year standing to the credit of the Overlay Reserve Fund may, with the approval of the Selectmen and the Chairman of the Finance Committee, be used for any extraordinary or unforeseen expenses of the Town.

Art. 9. To determine whether the Town will raise and appropriate the sum of $3,000 or any other sum to be used with an equal amount contributed by the Riverview Park Trust for the construction of the extension of Pine Street.

Voted, to appropriate the sum of $3,000.00 to be used with an equal amount contributed by the Riverview Park Trust for the construction of the extension of Pine Street. Provided, however, that should the total cost exceed $6,000 the Riverview Park Trust will contribute an amount not exceeding $500 additional.

Art. 10. To determine whether the Town will raise and appropriate or borrow money by the issue of bonds or notes under Clause 8 of Section 7 of Chapter 44 of the General Laws to defray the cost of Macadam pavement or other road material on Barretts Mill Road under specifications approved by the Department of Highways of the Massachusetts Department of Public Works.

A motion under this Article failed to pass.

Art. 11. To determine whether the Town will accept as a town way the laying out by the Road Commissioners of a street over land of the Riverview Park Trust extending from Old Marlboro Road to Harrington Avenue and to name said way.

Voted, to accept as a Town Way the laying out by the Road Commissioners of a street over land of Riverview Park Trust extending from Old Marlboro Road to Harrington Avenue and that said way be named Upland Road.

Art. 12. To determine whether the Town will accept as a town way the laying out by the Road Commissioners of an extension of Pine Street.

Voted, to accept as a Town Way the laying out by the Road Commissioners of an extension of Pine Street.

Art. 13. To determine whether the Town will appropriate $200 or any other sum for the grading of the Town's land situate at the corner of Main and Church Streets at Concord Junction called the Library Lot, said sum to be expended by the Board of Road Commissioners.

Voted, that the sum of $200 be appropriated for the grading of land owned by the Town situated in Concord Junction at the corner of Main and Church Streets and commonly called the Library Lot, such sum to be expended by the Board of Selectmen.

Art. 14. To determine whether the Town will appropriate a sum of money or direct how the same shall be raised in such amount as is needed for the rebuilding of Fairhaven Road or take any other action relating thereto.

Voted, to pass over this Article.

Art. 15. To determine whether the Town will appropriate $575 or any other sum for building a drain in Hawthorne Lane in accordance with levels taken by the Board of Road Commissioners.

A motion under this Article failed to pass.

Art. 16. To determine whether the Town will increase the salaries of the Treasurer and of the Collector of Taxes so that they may arrange for collecting moneys due the Town from a banking office at Concord Junction or take any other action relating thereto.

Voted, to pass over this Article.

Art. 17. To determine what action the Town will take with reference to a Zoning By-Law for the Town under the provisions of General Laws, Chapter 40, Section 25, and all acts in amendment thereof and in addition thereto.

Voted, that Articles 17 and 18 be taken up together.

Art. 18. To determine whether the Town will appropriate not over $1,500 for the purpose of having a Zoning By-Law presented to the Town.

Voted, that the committee appointed by the Moderator at the Town Meeting in March, 1926, be and it is hereby authorized to take such steps as may be necessary to present a Zoning By-Law to a Town Meeting of the Town of Concord.

Voted, that a sum of Fifteen Hundred (1500) Dollars be appropriated to the use of the Zoning Committee.

Committee: Edward B. Caiger, Samuel Hoar, Frank L. Draper, Kennan Damon, Burleigh L. Pratt, T. Alfred Wilson, Raymond P. Baldwin, John M. Keyes, James Nagle.

Article 19. To determine whether the Town will create a Planning Board under the provisions of General Laws, Chapter 41, Sections 70, 71 and 72, or act in any other manner thereon.

Voted, that this Article be laid on the table.

A true record.

Attest: William D. Cross, Town Clerk.

TOWN OF NEEDHAM, MASS.

RECORD OF SPECIAL TOWN MEETING

Monday, October 17, 1927

Pursuant of the foregoing warrant a meeting of the inhabitants of the Town of Needham, qualified to vote in elections and in town affairs was held in the Town Hall in said town on Monday, October 17, 1927, at eight o'clock in the afternoon.

The meeting was called to order by the Moderator, William G. Moseley. Margaret O. Chase, Myra R. Kingsbury, Charles M. Donahue, George W. Holt and Dana L. Southworth having been appointed as checkers by the Board of Selectmen were sworn to the faithful performance of their duties. Check lists were used and 12 women and 83 men were checked on the lists as being present, a total of 95 voters.

The warrant and return of the officer who served the same were read.

Proceeded to take up the articles under the warrant.

Article 1. To see if the Town will authorize the Water Commissioners to extend the water main under a six per cent ten-year guarantee, to the property being developed on Oak Hill, Needham Gardens, Fairfield Street and DeLue Street, or to any of these properties, and appropriate money therefor, or pass any vote or votes relative thereto.

Voted, That the Town authorize the Water Commissioners to extend the water mains, under a six per cent ten-year guarantee, to the property being developed on Oak Hill, and that the sum of two thousand dollars ($2,000) be appropriated therefor.

Voted, That the Town authorize the Water Commissioners to extend the water mains, under a six per cent ten-year guarantee to the property being developed in Needham Gardens and that the sum of ten thousand dollars ($10,000) be appropriated therefor.

Voted, That the Town authorize the Water Commissioners to extend the water mains under a six per cent ten-year guarantee, to the property being developed on Fairfield Street and that the sum of nineteen hundred dollars ($1,900) be appropriated therefor.

Voted, That the Town authorize the Water Commissioners to extend the water mains under a six per cent ten-year guarantee to the property being developed on DeLue Street and that the sum of twenty-seven hundred dollars ($2,700) be appropriated therefor.

Article 2. To see if the Town will authorize the Water Commissioners to extend the water main in Cedar Street from Central Avenue to the Wellesley line and appropriate money therefor, or pass any vote or votes relative thereto, on petition of Wilson H. Cranton and others.

Voted, That the Town authorize the Water Commissioners to extend the water mains in Cedar Street from Central Avenue, to the Wellesley line and that the sum of fifty-two hundred dollars ($5,200) be appropriated therefor.

Article 3. To see if the Town will vote to issue its notes or bonds to an amount not exceeding $30,000 in accordance with the provisions of General Laws, Chapter 44, Section 8 (4) and the acts in addition or amendment thereto, for the purpose of extending the water mains, and authorize and instruct the Water Commissioners to raise additional funds by revising and increasing water rates so that the payment of said notes and interest may be taken from the earnings of the Water Department, or pass any vote or votes relative thereto.

Voted, That this article be dismissed.

Article 4. To see if the Town will authorize the Selectmen to install two street lights on Warren Street extension, south of the railroad tracks, on petition of Carlton G. McIntosh.

Voted, That the Selectmen be and hereby are authorized to install two street lights on Warren Street extension, south of the railroad tracks, on petition of Carlton G. McIntosh.

At 8.22 o'clock P.M. it was

Voted, That this meeting be now dissolved.

Clarence E. Foss,
Town Clerk.

CHAPTER XXI

TOWNSHIP GOVERNMENT

In the Central group of states, extending from New York to Kansas and the Dakotas, towns (or townships as they are usually called) are local districts of some importance, but distinctly less than in the New England group. These states not only occupy geographically a central position, but they contain more than half of the population of the country; and in wealth and business activity they occupy an even more important place. Local districts called townships are also found in North Carolina, South Carolina, Arkansas, Montana, Nevada, and California; but in these states they are merely administrative areas for the assessment and collection of taxes or for the administration of justice. They do not function as governmental units with corporate and taxing powers as is the case in the states of the Central group.

The town or township of the Central states should be distinguished from the incorporated towns of some states. The latter are small semi-urban municipalities, corresponding to villages in most states, and having the recognized status of a municipal corporation. While towns in New York and Pennsylvania, and townships in Kansas have been held to be "municipal corporations,"[1] townships in the Middle West have usually been classed as quasi corporations. The township has been called "only a geographical subdivision of a county";[2] it has been referred to as "a subdivision of state territory, convenient in area, for the purpose of carrying into effect limited powers governmental in their nature,"[3] and as "an involuntary territorial and political division of the state organized for the exercise of a portion of the political power thereof."[4] As a quasi corporation the township has the right to sue and be sued in the courts, to purchase and own land for corporate purposes, and to make contracts in the exercise of its legal powers. But the Supreme Court of Iowa has held that in that state "a civil township is not a corporation and cannot be sued."[5]

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[1] *Town of Hempstead v. Lawrence,* 122 N. Y. S. 1037 (1910); *Commonwealth v. Wilkins,* 115 Atl. (Pa.) 887 (1922); *Rathbone v. Hopper,* 45 Pac. (Kas.) 610 (1896).

[2] *Harshman v. Bates County,* 2 Otto. (U. S.) 569 (1875).

[3] *State v. Bone Creek Township,* 190 N.W. (Neb.) 586 (1922). Also see: *Wilson v. Ulysses Township,* 101 N.W. (Neb.) 986 (1904); *People v. Grover,* 101 N.E. (Ill.) 216 (1913); *Posey Township v. Senour,* 86 N.E. (Ind.) 440 (1908).

[4] *Liberty Township v. Rock Island Township,* 144 Pac. (Okla.) 1025 (1914).

Towns in New York, New Jersey, Pennsylvania, and the eastern part of Ohio, are irregular in form and vary a good deal in area. Throughout the rest of this group the land before settlement belonged to the United States government and was marked off by surveys into geographical townships, approximately six miles square. These geographical or congressional townships, as they are often called, have usually been taken as the district for the organized civil township. But there are many exceptional cases. In sparsely settled regions several congressional townships are combined to form a civil township. Sometimes physical features are followed to a limited extent in the boundaries of the civil district; and cities and other incorporated places are often carved out of the geographical township. But in the main the township of the Middle-West is a square with straight line boundaries, containing an area of thirty-six square miles.

In most of these states the whole area is organized into civil townships, except for some urban districts organized as municipal corporations. But in several there are counties not subdivided into organized townships. In Illinois, sixteen counties in the southern half of the state, out of one hundred and two, do not have township organization. In Nebraska, only twenty-seven of the ninety-three counties have organized townships. These are in the easterly part of the state, and contain more than one-third of the total population. In Missouri, twenty-four of the 114 counties have township organization.[6] In North and South Dakota, townships in some counties are organized only for school purposes. The state of Washington has an optional township law, which has been adopted in two counties,—Spokane and Whatcom.

In Oklahoma, since 1913, a series of measures have provided for the abolition of township officials in about two-thirds of the counties, and the transfer of their functions to the county commissioners. Judicial decisions have held one of the legislative acts unconstitutional, and the principle of these decisions would apply to other acts. But inquiries show that township government is not in operation in 44 of the 77 counties, in the southern and eastern part of the state.[7]

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[5] *Austin Western Co. v. Weaver Township,* 114 N.W. (Ia.) 189 (1907). Also see: *Theulen v. Viola Township,* 117 N.W. (Ia.) 26 (1908); *Davis v. Laughlin,* 124 N.W. (Ia.) 876 (1910).

[6] The Missouri counties with township organization are in several groups: one group north of the Missouri river, another in the southwest, a small group in the south central section, and two counties in the southeast.

The relations between the townships and the urban municipal corporations established within their orginal limits vary in the different states.[8] Generally the cities are entirely independent of the townships; and in a few states all or most of the villages or boroughs have the same position. In Pennsylvania, boroughs as well as cities are independent of the townships; and in New Jersey, Wisconsin, Minnesota and the Dakotas, most of the boroughs and villages are independent. In Oklahoma, no city or incorporated town of over fifteen hundred inhabitants is included within the corporate limits of the township.[9] More commonly villages, while specially organized for certain purposes, remain part of the townships, as in New York and Michigan; while in some states all or most of the cities, as well as the villages, are parts of townships. This is the case with all cities and villages in Indiana, and with nearly all in Illinois, Ohio and Nebraska. While cities in Illinois and Kansas are usually a part of the township in which they are located, the larger places may be organized as separate townships.[10]

But in all of these states the compactly-built districts are separately organized as villages, boroughs or cities for certain purposes of local government. This reduces the importance of the township government, which deals only with rural problems. As the county is more important than in New England, the result is to make the township of much less significance than the New England town.

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[7] *Session Laws* 1913, 1915, 1919, 1921, 1927. These acts provided for the abolition of township officials in general, but in one section exempted certain counties by name. The later acts made changes in the list of counties exempted. The Act of 1927 was held invalid as special legislation not passed in accordance with the requirements of the constitution. *Hudgens v. Foster,* 267 Pac. (Okla.) 645 (1928); *Roberts v. Ledgerwood,* 272 Pac. (Okla.) 448 (1928). Cf. 23 *Am. Pol. Sci. Rev.* 688 (1929). Some counties have, however, abolished township government, under a constitutional amendment adopted in 1913; and special acts complying with the constitutional requirements have been passed for some other counties. Data based on inquiries by Professor J. W. Errant, University of Oklahoma, and Paul R. Dilliard.

[8] On the subject see Eugene McQuillin, *Municipal Corporations* (2nd ed.), vol. 1, sec. 86; *Ill. Const. Conv. Bull.,* 1920, p. 1050.

[9] *Byers v. Dunham,* 150 Pac. (Okla). 1049 (1915).

[10] *Cahill's Ill. Rev. Stat.,* 1927, ch. 139, sec. 141; *Rev. Stat. of Kas.,* 1923, sec. 15-104; *Ellis v. Jacobs,* 140 Pac. (Kas.) 856 (1914).

Most of the townships are rural districts with a small population. But there are also a considerable number of populous townships, especially where villages and cities are included within their limits. By far the largest were the six towns within the city of Chicago, the governments of which have been consolidated with that of the larger community. Other large townships in Illinois are Peoria with 76,000 population, Rockford with 75,000, East St. Louis with 66,000, Joliet with 60,000, Capitol (Springfield) with 59,000, and eleven others with over 20,000 each.[11] In Indiana, Center township, Marion county, which includes the city of Indianapolis, has 283,000, and twelve other townships have over 20,000 each.[12] In Ohio, the largest township is Canton with 86,000, containing the city of the same name; and seventeen others have each over 20,000. New York and Iowa have each ten towns with more than that population.[13] Pennsylvania has only one township of this size, but has eighteen others over ten thousand. New Jersey has ten towns and townships with more than 20,000; and Michigan has three.[14]

In most of these cases the government of the townships is unimportant compared with that of cities or villages within their limits. But the Pennsylvania townships and some of the towns in New York do not include urban municipal corporations; and the township government is the only local organization. In some of the large New York towns the greater part of the population is outside of the incorporated villages.

TOWNSHIP POWERS

Towns or townships can exercise no powers except such as are granted by express words, or such as are fairly implied in those granted, or such as are essential to the declared objects or purposes of the corporation.[15] As stated by the Supreme Court of Pennsylvania, townships "possess and exercise only such powers as are granted by the legislature in express words, or are necessarily or fairly implied in or incident to those expressly granted, or those which are indispensable to its declared objects and purposes." [16]

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[11] Six towns in Cook county outside of Chicago have over 20,000 population: Oak Park, 39,000; Proviso, 37,000; Evanston, 37,000; Thornton, 30,000; Bloom, 24,000, and New Trier, 20,000.

[12] *E.g.*, North (including Hammond) 84,000, Portage (including part of South Bend) 72,000, Harrison (Terre Haute) 71,000, and Pigeon (part of Evansville) 70,000. Fort Wayne is in four townships.

[13] In New York the largest town is Hempstead, in Nassau county, with 70,000 population.

[14] The largest in Hamtramck (49,000) within the limits, but not part, of Detroit.

The same position was taken by the Supreme Court of Michigan in an early case, as follows:[17] "Towns, with us, are mere political organizations, created wholly by statute, for certain purposes of local government. They are vested with no franchises or special privileges for their own benefit. They have only such powers as the statute confers, and are subject to no obligations, except such as are derived from statutory provisions." This rule of limited power also applies to municipal corporations, "and since towns are only quasi corporations the rule applies to them with especial force." [18] It results from the fact that the township "is only a quasi municipal corporation with little independent corporate life" and "the existence and power of which depend wholly upon the will of the Legislature." [19]

Townships are districts for local affairs and at the same time subordinate agencies for county and state business. Strictly local matters are of less relative importance than in the New England towns. To be sure, the three main objects of local administration—highways, poor relief, and schools—are matters of township concern; but even in these the county plays a more active part in the Central states than in New England, while the special local needs of the urban parts of the townships are looked after by the village and not by the township governments.

As administrative districts for the county and state, the townships usually assess and collect taxes for these larger political units as well as for local purposes. They are also election districts for national, state and county, as well as township, officers, and they are the primary district for the administration of petty justice and the enforcement of state laws. Even in matters that are often considered local in character—such as education and poor relief—the townships are subject to state laws and state and county supervision.

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[15] *Attorney General v. Burrell,* 31 Mich. 25 (1875); *Haverford Township v. Wilfong,* 60 Pa. Superior Court 214 (1915).

[16] *Petition of Herrington,* 109 Atl. (Pa.) 791 (1920).

[17] *Commissioners of Highways v. Martin,* 4 Mich. 557 (1857).

[18] *First National Bank of Milwaukee v. Town of Catawba,* 197 N.W. (Wis.) 1013 (1924). Also see *Town of Dekorra v. Wisconsin River Power Co.,* 205 N.W. (Wis.) 423 (1925); *Board of Township for Sullivan's Island v. Buckley,* 64 S.E. (S. C.) 163 (1909).

[19] *Liberty Township v. Rock Island Township,* 144 Pac. (Okla.) 1025 (1914); *Salmon v. Rochester and Lake Ontario Water Co.,* 197 N. Y. S. 769 (1923). Some states provide by statute that towns have only the powers expressly given by law, or such as are necessary to the exercise of the powers so given. *Gen. Stat. of Minn.,* 1923, sec. 1000; *Rev. Stat. of Mo.,* 1919, vol. 3, sec. 13170; *Comp. Laws of N. D.,* 1913, vol. 1, sec. 4084.

Townships are given the authority to exercise a limited police power in some states. Thus in New York, the town board may require a license for hawking and peddling. In Iowa, no one may operate a theater, moving picture show, pool or billiard parlor, dance hall, skating rink, club house, road house, amusement park, or bowling alley, outside the limits of cities or towns without procuring a license therefor from the township trustees.[20] Similar powers have been conferred upon township authorities in some other states.[21]

There is some tendency to permit townships to extend their functions. They may now establish libraries in some states, including Pennsylvania, Ohio, Michigan, Kansas, and Nebraska. In some states, they may establish parks, as in New York, Pennsylvania, Ohio, Illinois, Indiana, Wisconsin, Minnesota, and Kansas. In New York, Michigan, Ohio, Indiana, and Illinois, they may erect monuments and memorials for soldiers and sailors. They may establish cemeteries in some states; and in Missouri they may maintain hospitals. In South Dakota they may establish artesian wells, and in North Dakota they may provide a system of irrigation.[22]

Nevertheless the more general tendency in the Central states is towards a decline in the importance of the township. Thus in Illinois, where former laws authorized town meetings to levy taxes for specified purposes and for "any other purpose deemed necessary," the revised statutes of 1874, while adding to the specific purposes, limited the general grant to "any other purpose *required by law.*" Since then, the town assessment of property for taxation has been subjected to further supervision by county and state authorities; town collectors have been abolished in most counties; and with the development of state and county roads, only the minor roads are left to town management and this under increasing county supervision.

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[20] *McKinney's Consol. Laws of N. Y.*, vol. 10, Bk. 61, sec. 210; *Code of Ia.*, 1927, sec. 5582.

[21] *Rev. Stat. of Kas.*, 1923, sec. 80-1301; *Comp. Laws of Mich.*, 1922, sec. 2049 (35).

[22] Cf. T. B. Manny, *Rural Municipalities*, p. 84.

Conditions in Ohio are described in the report of a joint legislative committee in 1926 as follows: "There can be no question of the decline of the township in Ohio. The last fifteen years have witnessed a gradual paring away of its functions and a shifting of authority to the county. In 1913 the appraisement of real estate was transferred to the county and in 1925 the assessment of personal property was similarly centralized. The establishment of general health districts in 1919 displaced the township as an agency of health administration, and the revision of the ditch laws in the same year omitted the township as a drainage authority. In the latter case, however, the township has partially regained its position. Of far greater importance has been the centralization of highway activity under the road laws of 1915."[23]

The increased use of special districts has also caused the town to decrease in importance. As pointed out by the Special Joint Committee on Taxation and Retrenchment in New York, as special districts are created there is a consequent withdrawal of duties from the township which "will undoubtedly affect adversely the importance of the town." According to the report of the committee this was already the situation in New York.[24]

LEGAL LIABILITY OF THE TOWNSHIP

The Supreme Court of New York has pointed out that a town "is a civil division of the state" which "exists primarily as a subdivision of the state, to more conveniently carry on the governmental functions of the state." It was pointed out that the "duties involved in such governmental functions are involuntary, and are placed upon the town without its consent." When performing such duties the rule of respondeat superior does not apply as between the town and its officers.[25] A township is thus not liable for the condition of its highways and bridges unless such liability is placed upon it by statute. The Supreme Court of North Dakota has stated this principle of non-liability as follows: ''The care of highways and bridges devolves primarily upon the state. It is a governmental function, but for negligence in its performance the state is not liable, because the government is not liable to the individual unless made so by constitutional or statutory enactment. Upon the organization of the county, it becomes the instrument or agency through which the state performs that duty, and in the performance of that duty it acts simply as an agent, and incurs no liability beyond that of its principal. When the township is organized, it, in turn, becomes the instrumentality of the state for the performance of that function, and in its performance it shares the immunity from liability which the state enjoys.''[26]

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[23] *Report of the Joint Legislative Committee on Economy and Taxation of the 86th General Assembly* (December, 1926), p. 251. In Indiana the "township plays an unusually important though diminishing part in the scheme of government." F. G. Bates and O. P. Field, *State Government* (1928), p. 457.

[24] *Report of the Special Joint Committee on Taxation and Retrenchment in New York*, 1923, pp. 261 ff.

[25] *Augustine v. Town of Brant*, 227 N. Y. S. 305 (1928).

This rule of non-liability is based upon the principle that the sovereign can do no wrong, and that political divisions such as towns, are mere representatives of the state. While this principle has been referred to by the Supreme Court of New York as an ''exploded theory,'' it is generally accepted by the courts in considering the liability of the township for the torts of its officers.[27]

Towns also have a corporate capacity, however, and may be permitted by the legislature to assume special duties and to engage in enterprises not necessary to governmental purposes. It has been held that ''when a town engages in such an enterprise, or assumes such a special duty, it becomes liable, like an ordinary individual, for the proper conduct of such duty.'' A town, in establishing a park, has been held to be acting in a corporate capacity; ''it was established by permission and not by force of law.''[28]

Legislative control over its property results from the legal status of the township as a quasi corporation. As in the case of municipal corporations, a distinction is observed by the courts between the public or governmental and the private or proprietary right in which a township holds property as affecting the power of legislative control over such property. But, as pointed out by the Supreme Court of Oklahoma, the township is one of the lowest forms of municipal corporate life, and it is consequently more completely subject to legislative control. ''Its rights in property progressively partake more of a public or governmental and less of a

[26] *Vail v. Town of Amenia,* 59 N.W. (N. D.) 1092 (1894).

[27] *Jones v. Town of Clarkson,* 223 N. Y. S. 611 (1927). Also see *Coyne v. Town of Greenburgh,* 182 N. Y. S. 230 (1920); *Theulen v. Viola Township,* 117 N.W. (Ia.) 26 (1908).

[28] *Augustine v. Town of Brant,* 227 N. Y. S. 305 (1928).

private or proprietary character with such decrease in independent corporate life."[29]

TOWNSHIP MEETINGS

Township meetings are established by statute as the central organ of government in New York, New Jersey, Michigan, Illinois, Wisconsin, Minnesota, Nebraska, and the Dakotas.[30] These form the northern tier of the central group, lying due west of New England. The extension of the system of direct democracy to these states is evidently accounted for by the movement of population from the older states westward along parallel lines.

The authority of the township meeting varies in the several states, so that no general statements can be made relative to its powers. Its authority is, however, less than that of the New England town meeting. The powers of the town meeting in Nebraska and Wisconsin may be considered as illustrative of this group of states. By statute the electors of the town in Nebraska "shall have power at their annual town meetings to select such town officers as may be required to be chosen; to direct the institution and defense of suits at law or equity in which such town may be a party in interest; to direct such sum to be raised in such town for the support and maintenance of roads and bridges, or for any other purpose provided by law as they deem necessary; to take measures and give directions for the exercise of their corporate powers; to impose penalties upon persons offending against any such regulations, and to make rules, regulations, and by-laws necessary to carry into effect the powers herein granted."

The statutes of Wisconsin provide that the qualified electors of the town assembled in town meeting may raise money; direct the institution and defense of actions; pass police regulations for the good order of the town; direct the compromise or settlement of any legal indebtedness; raise money for the support of destitute soldiers; authorize the town board to issue bonds; provide for the erection of a town hall or other buildings for the use of the town; provide for the erection of landmarks; authorize the town board to sell any real estate; and appropriate money to control insect pests, weeds, or plant or animal diseases.

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[29] *Liberty Township v. Rock Island Township,* 144 Pac. (Okla.) 1025 (1914).

[30] Provision is also made in Washington for a town meeting; but as pointed out above, only two counties in that state have adopted township government. For statutes on the town meeting see: *McKinney's Consol. Laws of N. Y.*, vol. 10, Bk. 61, sec. 40; *Comp. Laws of N. J.*, 1709-1910, vol. 4, p. 5570; *Comp. Laws Mich.*, 1915, vol. 1, secs. 2054-2078; *Cahill Ill. Rev. Stat.*, 1927, ch. 139, sec. 39; *Wis. Stat.*, 1927, vol. 1, sec. 60.18; *Gen. Stat. Minn.*, 1923, sec. 1028 ff.; *Comp. Stat. Nebr.*, 1922, sec. 914; *Comp. Laws N. D.*, 1913, vol. 1, sec. 4086; *S. D. Rev. Code*, 1919, vol. 2, secs. 6047.52; *Remington's Comp. Stat. Wash.*, 1922, vol. 3, sec. 11375.

The usual powers of the township meeting are to levy taxes, pass certain police regulations, provide for the erection of a township hall, and to elect township officers. In New York, where the meeting is held biennially, it has no taxing power, as the town taxes are levied by the county board of supervisors.[31] And apart from the election of town officers, its powers are few and comparatively unimportant.[32] Appropriations for more than $500 are made by ballot of the property owners; and a township meeting may be held in a number of election districts instead of at one place, which means that the so-called meeting becomes simply an election by ballot. In other states the township meeting has power to levy taxes and enact local by-laws, subject to statutory limitations. But in Illinois and Michigan the township board is authorized to levy taxes for ordinary township purposes in case of the refusal or neglect of the township meeting; and in Illinois, town road taxes are now levied by the county boards, for amounts certified by the town highway commissioners.[33]

These township meetings and township elections in other Central states are usually held in the spring.[34] But in New York they may be held at the time of the biennial state elections in November; and in Ohio township elections are now regularly held in November. In New York, Michigan, and Wisconsin one of the town officers acts ex officio as chairman of the meeting. In the other states where township meetings are held, the New England rule of electing a moderator from those who are not officers is followed.

It is difficult to generalize in regard to the attendance at the meetings held in thousands of townships throughout these states.

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[31] Town Law, sec. 148.

[32] It can fix the number of constables (not exceeding five); can direct suits in which the town is interested; provide for the destruction of noxious weeds and animals; abate public nuisances that affect the health; and care for the town property. Town Law, sec. 43.

[33] For proceedings of a town meeting in South Dakota, see J. M. Mathews and C. A. Berdahl, *Documents and Readings in American Government* (1928), pp. 866-69.

[34] February in Pennsylvania; elsewhere usually in March or April.

But replies to inquiries indicate that in most cases the number of persons present is meager compared with the practice in New England. In townships with 500 to 600 voters an attendance of ten to twenty was reported, while in many cases the business was transacted by the members of the township board. Under these conditions there can be little of the active popular debate which makes the New England town meeting an interesting object of study.[35]

Some townships, however, follow the New England custom, and show a larger attendance at the township meeting. In Booneville, New York, with 1,200 voters, the average attendance was reported as 850; and in Olean, New York, with the same number of voters, from 300 to 400 attended the township meeting. In Wisconsin a good attendance seemed to be more common than in the other Central states. Even in small towns an attendance of from 50 to 100 was reported; while in Buchanan, with 500 voters, 150 usually appeared, and in Franklin, with 420 voters, the average was about 300.[36] In other places the decision of an important question sometimes brought out a large attendance.

In the southern tier of the Central states—Pennsylvania, Ohio, Indiana, Iowa, Kansas, Oklahoma, and Missouri—there are no deliberative township meetings.[37] Town officers are elected, and questions are submitted for popular approval, but there is no assembly of the town voters in one place as the official organ for debating and deciding local business.

Several factors explain the absence or weakness of the town meeting in these states. In the southern tier immigration from New England has been limited; and the representative town system of Pennsylvania was thus introduced and extended, rather than the direct democratic assembly. In the northern tier, New England influences led to the establishment of the town meeting by statute.

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[35] In Illinois, inquiries as to attendance at town meetings made for a legistative committee in 1912 secured replies from only 440 of the 1430 towns in the state. Only 144 replies (barely a tenth of the towns) reported an attendance of over fifty at the business meeting; and only 39 towns reported an attendance of over 100. In towns including cities of some size the town meetings were of even less importance than in smaller places. *Ill. Const. Conv. Bull.*, 1920, p. 1025; J. A. Fairlie, *Report on County and Town Government in Illinois* (1912).

[36] Replies to circular letters of inquiry sent to town officers. See J. A. Fairlie, *Local Government in Counties Towns and Villages*, pp. 171-72.

[37] *Ill. Const. Conv. Bull.*, 1920, p. 1050.

But immigration from Europe and from states to the south has brought into the rural districts of the southern tier states, as well as the cities, large numbers of voters with no experience in government by popular assembly. And these voters prefer the representative to the directly democratic system.[38]

Again the artificial form of the township in the Middle West has been of no little influence. Certainly in these states the township often lacks the social unity of the New England town. A village may develop in one corner of a township, and become the local market for two or three adjacent townships, while the distant farmers of its own township trade in the village of another. In other cases, a village may grow up across a township line, and the political line of demarcation must be followed, although there is no separation of real interests between those who live on either side. In states where the villages are entirely independent of the townships, the incorporation of a village leads to the location of the hall for township meetings in an out-of-the-way place.[39] Under these conditions the political unit does not accord with the economic and social centers of activity.

Lastly, the special organization of villages removes from the township meeting many of the important problems of local government. An examination of New England town meeting proceedings will show to how great an extent the problems of the village are the vital subjects of discussion. When these are taken away, what remains is hardly enough to arouse the active interest of the voters.

TOWNSHIP OFFICERS

Nowhere in the Central states do we find the New England title of selectmen. In their place are two distinct types of organization, and, curiously enough, the type which corresponds most closely to that of New England is found most generally in those states which have no township meeting. In Pennsylvania, Ohio, Iowa, Minnesota, Nebraska, and the Dakotas and Washington the principal authority is a committee or board of supervisors or trustees.[40] In the other states there is a well-defined head officer of the township, with specific powers and duties, but assisted and checked in some matters by a township board.

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[38] Sometimes, however, and notably in Wisconsin and Minnesota, the Germans and Scandinavians take a very active interest in township affairs.

[39] Professor W. A. Schaper.

[40] *Pa. Stat. Complete to 1920*, secs. 6812, 6827; *Page's Ohio Code*, 1926, vol. 1, sec. 3286; *Gen. Stat. of Minn.*, 1923, sec. 1049; *Comp. Laws N. D.*, 1913, vol. 1, sec. 4185; *S. D. Rev. Code*, 1919, vol. 2, secs. 6080-92; *Comp. Stat. Nebr.*, 1922, sec. 907; *Remington's Comp. Stat. Wash.*, 1922, vol. 3, sec. 11376.

This head officer is called the supervisor in New York, Michigan, and Illinois, and the town chairman in Wisconsin. In these states, in addition to his duties as township officer, he is also the township representative on the county board, and this dual function adds to the importance of the office. In Indiana, Missouri, Kansas, and Oklahoma, the chief officer is called the township trustee.[41]

The duties of these officers are not uniform in the different states. In New York and Illinois the supervisors act as town treasurers. They receive the town funds, pay authorized charges, and keep accounts. They can also prosecute in the name of the town for penalties due the town; and in New York can sell town property when authorized by the town meeting. In Michigan they are the township assessors of property for taxation and overseers of the poor, and they represent the township in legal proceedings.[42] In addition, many other duties are imposed on the supervisors in these states.

Still more important are the township trustees in Indiana. Each trustee has charge of the township finances, and is overseer of the poor and ex officio trustee, treasurer and clerk of the school township. He is also election officer, preparing a list of voters and acting as inspector of elections. And he is authorized to rearrange road districts, to supervise drains and act as fence viewer.[43] In Kansas, the township trustee is overseer of the poor, divides the township into road districts, and has charge of township property. He also sees to a proper application of all money belonging to the township for road or other purposes.[44] In Missouri townships, the trustee is treasurer and has charge of the finances of the town.

Township boards are variously constituted in different states. Where there is a chief township officer he is usually a member, and the board is composed of township officers. In New York, Illinois, and Michigan, the members are the supervisor, clerk, and justices of the peace; and in Kansas, the trustee, clerk and treasurer. In Nebraska, the town clerk, town treasurer, and the justice of the peace who received the largest number of votes for that office, constitute the town board. But in Missouri the board is composed of the trustee and two elected members, and in Indiana of three resident freeholders specially elected for this purpose, while the trustee is not a member. In other states, the board consists of three members, distinct from the other town officers. They are called supervisors in Pennsylvania, Wisconsin, Minnesota, and the Dakotas, and trustees in Ohio and Iowa.

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[41] *Burns' Ind. Stat.*, 1926, vol. 3, sec. 12024; *Rev. Stat. of Mo.*, 1919, vol. 3, sec. 13181; *Comp. Okla. Stat.*, 1921, vol. 2, sec. 10944.

[42] *Comp. Laws Mich.*, 1915, vol. 1, secs. 2110 ff.

[43] *Burns' Ind. Stat.*, 1926, vol. 3, sec. 12027; vol. 2, secs. 6787 ff.

[44] *Rev. Stat. of Kas.*, 1923, sec. 80-301.

A primary function of these township boards is to audit the accounts of the township officers and authorize the payment of claims. In Kansas they act as auditors and as boards of highway commissioners. In other states their powers are larger. In New York, they license peddlers, can establish water, lighting and sewer districts within the town, and act as boards of health.[45] In Michigan, they can fill vacancies in township offices, are local boards of health, and can levy township taxes when the town-meeting has failed to act.[46] In organized townships in Missouri, they regularly levy township taxes.[47] In Indiana, the boards examine and approve township appropriations, fix the rate of taxation, and can borrow money.[48] In Wisconsin, they audit accounts, order payments, have charge of town property, form and alter school and road districts, and fill vacancies in town offices.[49]

Where there is no single head officer of the township, the township boards are the general administrative authority, and usually have also the power to levy taxes. Thus in Pennsylvania, they supervise the township roads and bridges, act for the townships in their corporate capacity, and sometimes serve as overseers of the poor.[50] In Ohio, they levy township taxes and act as road commissioners and overseers of the poor.[51] In Iowa, they act as boards of equalization, overseers of the poor, highway commissioners, and election officers.[52] In several states they form the local boards of health. Other minor powers are granted and duties imposed in all the states; and sometimes important additions are made by special legislation.

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[45] Town Law, Art. VI.

[46] *Comp. Laws of Mich.*, 1915, vol. 1, secs. 2128, 5041.

[47] *Rev. Stat. Mo.*, 1919, vol. 3, secs. 13212 ff.

[48] *Burns' Ind. Stat.*, 1926, vol. 3, secs. 12062 ff.

[49] *Wis. Stat.*, 1925, vol. 1, sec. 60.29.

[50] *Pa. Stat. Complete to 1920*, secs. 6870 ff.

[51] *Page's Ohio. Code*, 1926, vol. 1, secs. 3268 ff.; 3476 ff.

[52] *Code of Ia.*, 1927, secs. 739, 4151, 4780, 5320, 5574, 7129.

Township clerks are elected in all the Central states except Indiana. They act as secretaries of town meetings where these are held, and as clerks of the township boards. In some states they are also clerks of the township school boards.[53] and in some they keep records of chattel mortgages and stray animals. In Iowa, the clerk is treasurer of the township. The office is less important than in New England; and continued re-elections of the same person to the office are less frequent.

Assessors are also elective township officers in most of these states. In most states a special official is chosen, but in Michigan the supervisor acts as the assessing officer of the town.[54] In New York towns, there are three assessors. In Pennsylvania two assistant assessors are elected in the third and last year of the assessor's term; and in that year a general revaluation of property is made. In Michigan, a board of review is established in each township, consisting of the supervisor and two other elected members, which decides on complaints and corrects errors in the assessment roll. As has been noted, there is often more or less county supervision or equalization of the township assessments; in many states there is a state authority with larger powers of control over local assessors;[55] and in Ohio and Kansas, county assessment has replaced town assessors.

Treasurers are elected in all of the states in this group, except where another officer acts in this capacity, as the supervisors in New York and Illinois,[56] and the clerk in Iowa. They receive township, county and state taxes within their townships, and pay over the latter to the county treasurers. They have charge of township funds, and make payments on orders of the township boards.

While poor relief is a county function in the Central states, some duties in this field are performed by town officers. In Pennsylvania and New Jersey, many towns support almshouses and look after cases needing temporary relief; and in these towns overseers of the poor are elected. Elsewhere township officers determine who are entitled to admission to the county poorhouse, and sometimes they have power to grant temporary outdoor relief. Usually these

[53] Michigan and Ohio.

[54] *Comp. Laws of Mich.*, 1915, vol. 1, sec. 2111.

[55] See Chapter XVIII.

[56] Town collectors are, however, elected in New York and in a few Illinois counties. In Pennsylvania town collectors are elected in all towns, and town treasurers in a few towns.

matters are attended to by the supervisors or trustees, acting as overseers of the poor. But in New York, one or two overseers of the poor are elected in each town.[57]

Roads in the rural districts were for a long time constructed and repaired by a labor tax, worked out under the supervision of highway overseers, often elected by road districts into which the townships have been divided. In the public land states the roads for the most part run along section lines, with but slight avoidance of grades or attention to the shortest lines of traffic. Within recent years, however, the use of money taxes and technical experts in road building has been extended. At the same time the tendency has been to substitute the town for the minor district as the primary administrative unit. Progress has also been made in the building of county roads; and in most states the movement for better roads has been actively aided by the state governments.[58]

In New York and Illinois, town highway commissioners are elected; and in New Jersey, Wisconsin, Iowa, and North Dakota, the town board has control of township road matters. Certain highways are now, however, under the supervision and control of county authorities. In Pennsylvania, the township supervisors appoint district road-masters; and in Michigan, township highway commissioners are elected, who appoint district overseers.[59] In Ohio, township roads are under the control of the township trustees. They may designate one of their number to have charge of the maintenance and repair of roads; they may divide the township into three districts and one take charge of each; or they may appoint a competent person not a member of the board to have charge of the roads.[60] In Indiana, the township trustee has charge of all highways in the township which are not under the control of the county commissioners.[61] In Kansas, the township board, with the approval of the county engineer, appoints, ''on his merits only,'' a competent experienced road builder for the entire township.[62] The township board of supervisors in South Dakota must designate one of its number to have charge of the road work in the township.[63]

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[57] See Chapter XIV for a discussion of poor relief administration.

[58] See Chapter XVII on highway administration.

[59] *Pa. Stat. Complete to 1920*, sec. 6870; *Comp. Laws of Mich.*, 1915, vol. 1, secs. 2054, 4471.

[60] *Page's Ohio Code*, 1926, vol. 1, sec. 3370.

[61] *Burns' Ind. Stat.*, 1926, vol. 2, sec. 8520.

[62] *Rev. Stat. of Kas.*, 1923, sec. 68—530.

Justices of the peace are elected by townships, the number varying in the different states, usually from two to five for each township. Technically they are still considered, in most states, as county officers. But they usually act only within the township for which they are elected, and in some cases they are now classed as township officers.

In all of the Central states justices of the peace exercise judicial powers in minor cases. Their jurisdiction is, however, strictly limited in various ways. In civil cases they can conduct a trial in certain classes of cases where the amount involved is small, usually varying from one hundred dollars to three hundred dollars in the different states. The criminal jurisdiction of the justices of the peace is also limited, sometimes by the nature of the offense, and sometimes by the extent of the penalty. The office of justice of peace as an agency in the administration of justice has been considered in connection with the county law enforcement officers.[64]

One or more constables are also elected in each township. They are specially charged with the duty of arresting known felons or any one committing crime in their presence. But ordinarily they act only as ministerial agents of the justices of the peace on specific warrants to make arrests, subpoena witnesses, and execute the judgments of the court. They also publish notices of elections.

TOWNSHIP FINANCES

The scale of township finances is indicated in the following table, from the census reports on Wealth, Debt and Taxation for 1922. In the aggregate the townships in this large group of states have larger revenues than the New England towns; but this is a much smaller proportion of the total revenues for state, county and local purposes. Township revenues were about two-thirds of the state revenue from the general property tax, about one-fourth of the state revenue from all taxes, and about one-fourth of the county revenue from the property tax in the states with townships. Township debts were about two per cent of the aggregate public debt of states and all local governments in this group of states. Later data from state reports for Illinois, Indiana and Ohio indicate that township taxes have remained stationary, while county and state taxes have continued to increase.

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[63] *S. D. Rev. Code,* 1919, vol. 2, sec. 8550.

[64] See Chapter XIII.

More than 90 per cent of the township revenue reported comes from the general property tax, with small amounts from special taxes, poll taxes, licenses and permits, and special assessments.

Township Revenues, 1922,* in Thousands of Dollars

		Taxes Collected					
	Taxes levied	*Gen. prop. tax*	*Special taxes*	*Poll taxes*	*Licenses*	*Spec. ass'ts*	*Total*
New York	$18,106	16,083	2,251		932	2	19,268
New Jersey	4,387	4,224	25	105	322	371	5,047
Pennsylvania	12,486	11,783		34	78	75	11,970
Ohio	13,290	12,826	116		11	793	13,746
Indiana	5,551	5,940		2	573		6,515
Illinois	18,636	16,869		42	37	222	17,171
Michigan	14,537	13,330			4		13,334
Wisconsin	11,088	11,578	509		294	107	12,488
Minnesota	8,955	9,177			4		9,181
Iowa	6,178	5,745		246			5,901
Missouri	1,094	1,051		44			1,095
North Dakota	2,532	2,361		33		5	2,399
South Dakota	2,561	2,309		55	19		2,383
Nebraska	1,472	1,606		59			1,665
Kansas	5,886	6,064		195	323	167	6,749
Oklahoma	3,734	3,750			117		3,867
Washington	303	351					351

* *U. S. Census Reports, Wealth, Debt and Taxation,* 1922: *Assessed Valuation and Tax Levies,* p. 150; *Taxes Collected,* pp. 141-145.

The system of township organization, or the direct government of the affairs of a township by the inhabitants thereof was referred to by Thomas Jefferson as "the wisest invention ever devised by the wit of man for the perfect exercise of self-government, and for its preservation,"[65] and is still advocated "on the theory that the power which administers their affairs and which assesses the taxes upon their property is nearer and more easily controlled by them under township organization."[66] But as now functioning, the township is no longer a satisfactory unit of local government.[67] Problems which were formerly local in nature have become of county and even statewide concern.[68]

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[65] James Bryce, *The American Commonwealth,* vol. 1, p. 595. Alexis De Tocqueville, *Democracy in America* (5th ed., 1873), vol. 1, p. 74, also stated that the township is an association which is so perfectly natural that it "seems to come directly from the hand of God."

[66] *C. B. and Q. R. R. Co., v. Klein,* 77 N.W. (Neb.) 1069 (1897).

There was a time when the population was so sparsely settled and means of communication so difficult, that health conditions, the care of the poor, the construction of roads and bridges, the maintenance of schools, and other questions were largely of local concern. These conditions in the earlier period of our history probably warranted the use of a small unit of self-government like the township for the administration of certain of these governmental problems.

With larger population, and with improved roads and means of transportation, larger units of government are possible and desirable. It has therefore been urged that the township can no longer be justified as a unit of local self-government and that the functions now performed by it should be transferred to the county, to be carried out under state supervision. This should result, not only in a saving of money but in a more satisfactory performance of the functions. Tendencies in this direction are seen in the county unit of school and highway administration, tax assessment and collection, care of the poor, and health administration.[69]

It at least seems clear that the maintenance of separate township governments in areas including cities of some size is an unnecessary duplication of machinery. For townships with smaller villages, a scheme of local government for rural communities, including both village and rural territory, something like the New England town, promises some advantages. This, however, will require a readjustment of the system of local taxation, so as to permit different rates for different sections of such communities.[70]

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[67] For defense of township government see, Clarence Poe, ''Why Not Local Self-Government for Rural Communities?'' *County Government and County Affairs in North Carolina* (Chapel Hill, 1918), pp. 41-48.

[68] *Report of Special Joint Committee on Taxation and Retrenchment in New York*, 1923, p. 17.

[69] *Report of the Special Joint Committee on Taxation and Retrenchment in New York*, 1923, p. 43; *Report of the Joint Legislative Committee on Economy and Taxation in Ohio*, 1926, p. 254.

[70] T. B. Manny, *Rural Municipalities*, chs. 14-16.

CHAPTER XXII

COUNTY AND SPECIAL DISTRICTS

COUNTY DISTRICTS

In the Southern and Western states, and in some counties in states already noted, there is no general system of local corporations corresponding either to the New England towns or the organized townships of the Central states. But even in these sections the counties are divided into districts for various purposes of local government, such as elections, the administration of petty justice, roads and schools. These districts differ from towns and townships of the North in two important points. In the first place instead of using one district for all local administration below the county, different districts are used for various purposes; and these are sometimes neither coterminous nor inclusive in area, but may overlap each other. In the second place, with the exception of school districts in some states, these county districts in most cases have no corporate capacity, and no power of taxation, but are simply convenient subdivisions for performing the functions of county government. Thus the magisterial districts in Virginia, which are the most important of these county divisions, have been referred to as "subordinate divisions or precincts of a county, created for political and administrative purposes of exceedingly limited character. They are without that artificial personality possessed by corporate bodies."[1] Some officers are, however, elected in and for these districts; and in a slight degree they take the place of the towns and townships of the Central states.

Southern States.—Usually one class of districts is somewhat more important than the others; and is sometimes used for several distinct purposes. The names of these show a great deal of variety. In Virginia and West Virginia, they are called magisterial districts, and in Tennessee, civil districts. In North and South Carolina, Arkansas, and Missouri, the name township is used, and in the two latter the congressional townships are the areas for the civil districts; but they are not corporate organizations except in some of the Missouri counties. The Supreme Court of North Carolina, in considering the nature of the townships in that state has said that they are not "corporate bodies, nor have they 'any corporate powers whatsoever, unless authorized by an act of the General Assembly.' " They are "but territorial sections of counties upon which, for appropriate purposes, power is conferred to perform functions of government of local application and interest."[2] County districts in Maryland, Florida, and Alabama are known simply as election districts or precincts, and in Mississippi as supervisor's districts, which are in turn subdivided into school districts and election precincts. In Georgia, the principal county divisions are called militia districts. In Delaware, the old English term "hundred" is still retained. In Louisiana, the subdivisions of the parishes are known as wards. And in Texas, the counties are divided into commissioner's precincts, and these again into justice's precincts.

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[1] *Moss v. Tazewell County*, 72 S.E. (Va.) 945 (1911).

Generally the number of such districts in a county is smaller than the average number of townships in a county of the Central states.[3] And as a corollary the average area is larger than that of the congressional township. The population of the districts is usually somewhat more than that of a rural township in the Central states. In most of these states; cities and villages are regularly included within the county districts. But a few large cities either themselves form districts, or are not included in the county districts, as in the case of all cities in Virginia.

Magisterial districts in Virginia, as pointed out above, are the most important of the county divisions in Southern states. In each there is elected one supervisor to serve on the county board, three

[2] *Wittkowsky v. Board of Commissioners,* 63 S.E. (N. C.) 275 (1908). Cf. *Gallishow v. Jackson,* 83 S.E. (S. C.) 454 (1914).

[3] In Virginia there may be not less than three nor more than eleven magisterial districts; in West Virginia there may be from three to ten; in Tennessee the county court divides the county into civil districts "of convenient size" but no county may have over twenty-five such districts or four for every 100 square miles; and in Louisiana parishes are divided into not less than five nor more than ten police jury wards. In Texas, counties are divided into four commissioners' precincts and into not less than four nor more than eight precincts for the election of justices of the peace. Militia districts in Georgia must contain at least one hundred male persons over twenty-one years of age. There are eleven, nine and thirteen hundreds in the three counties of Delaware.

justices of the peace, a constable, and an overseer of the poor.[4] In Mississippi, Louisiana, and Texas, the county divisions are districts for electing members of the county boards, justices of the peace and constables. In North and South Carolina, the townships are districts for assessing taxes.[5] In the other states, they are mainly districts for electing justices and constables; but in Kentucky, Tennessee, and Arkansas, the justices are at the same time members of the county boards. In Tennessee, most of the civil districts also elect assessors, and in Arkansas each township may become a road district and elect an overseer of highways.[6] In West Virginia, a deputy sheriff is often appointed for each magisterial district, and there is some tendency to appoint deputy assessors for one or more districts.

The officers selected for the county district exercise functions similar to those of the same name in the townships of the Central states. The jurisdiction of the justices is generally about the same as in those states. But in Georgia, their authority in criminal cases is confined to the preliminary stages, and they cannot conduct trials and impose penalties.[7] On the other hand, in Tennessee, their civil jurisdiction is more extensive than usual. They can try some cases where as much as $1,000 is involved, and others up to $500, and have also equity powers in cases up to $50.[8] Likewise in Mississippi, and other states, where there are no county courts, the justice's court is an important part of the judicial machinery.

Usually the law allows the justices of the peace to deal with cases arising anywhere in the county, but in Mississippi they are for the most part confined to cases within their district. In Kentucky, justice's courts are classed as courts of record; and in other states they are required to keep a docket showing the cases brought before them.

In the three states where the justices are also members of the county boards, the combination of functions makes them the general public agents for their districts in local matters. And in these cases the office is doubtless of more importance than that of township supervisor in the Central states. In other Southern states the justices are also of more importance than in the Northern states. Thus in Alabama, where county commissioners are elected at large, the justices are the chief officials of their precincts, and, besides their judicial powers, they recommend persons for admission to the poorhouse.

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[4] *Va. Code*, 1924, sec. 127. The county board may employ a road supervisor for each magisterial district.

[5] *Const. of N. C.*, Art. VII, sec. 6; *Code of Laws of S. C.*, 1922, vol. 3, sec. 469.

[6] *Digest of Stat. of Ark.*, 1921, secs. 5259 ff.

[7] *Ga. Code*, 1926, sec. 6524.

[8] *Ann. Code of Tenn.*, 1918, vol. 5, sec. 5935.

Justices of the peace are appointed by the governor, in Maryland and South Carolina; and in Alabama, besides the elected justices, the governor may appoint a notary public in each precinct with all the power of a justice.[9] In North Carolina, three justices of the peace are elected for each township; but the governor may appoint, at his discretion, one or more persons in every county to act in that capacity.[10]

Election officers are usually appointed for each county district, or, in states where the principal district is large, for subdivisions. Overseers or supervisors of roads are appointed for road districts, which may be subdivisions of the larger districts, or may be formed without reference to them. School districts as subdivisions of the county have also developed in the Southern states. In some cases they are co-extensive with the county districts and in others special districts have been established. With the adoption and extension of the county unit system of school administration in Southern states, these districts have become largely administrative subdivisions under the close supervision of county authorities.

Why do these county districts in the South play such a small part in local government as compared with the New England towns or the townships in the Central states? It has been usual to explain this situation by the larger development of county administration; and this in turn has been explained by the conditions of early colonial settlements along the seaboard. But, while these factors have had some influence, they are not entirely adequate to an understanding of the present situation. As pointed out in a previous chapter, the importance of county administration in the Southern states, as measured by per capita expenditure, is less than in the Central states. And it thus appears that the total volume of local administration in the South is much less than in the Northern states. Moreover, the failure of the Reconstruction attempts to introduce the Northern township in the South indicates that the underlying conditions were not favorable to the experiment.

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[9] *Const. of Md.*, Art. IV, sec. 42; *Code of Laws of S. C.*, 1922, vol. 3, sec. 778; *Code of Ala.*, 1923, vol. 4, sec. 9251.

[10] *N. C. Code*, 1927, secs. 1463, 1468.

Up to the time of the Civil War, local government in the South was profoundly affected by the system of slavery and large plantations. On the large estates such road building and poor relief as were imperative were provided by the land owners. Public schools were unknown. The slaves had no votes, and the poor whites little influence. The whole government was essentially aristocratic in its tendencies. The county was perhaps the smallest district where there was a sufficient number of persons with political power to make possible any collective public activity.

At the present time the situation is in one sense simply a survival of the system inherited from the earlier period; and the force of inertia, or conservatism in adhering to established institutions, stands in the way of change, even if conditions were favorable. But the conditions are still in large measure those which have continued or developed from ante-bellum days. Slavery is gone, but the negro population remains, and in most of the Southern states is effectually debarred from political activity. Anything like a New England town meeting would involve a revolution in social ideas. And in large sections the number of white people living in districts corresponding to the Northern township are too few for any effective popular government. Land in the South is still owned in much larger tracts than in New England and the Central states. Many of the farms are no longer cultivated entirely by the owners, but are rented in small tracts to tenant farmers.

These economic factors must affect the political system both directly and indirectly. The owners of large estates have larger political influence than the small tenant farmers, while the latter are likely to be less active in demanding or exercising political privileges than the freeholders with larger farms in the Northern states. On the large estates, too, some private roads and drains are built which would be constructed as public works where land is owned in smaller lots. And while poor relief is still of small importance in the South, some assistance is given to dependents on these estates without any appeal to the public authorities.

The fact that the South is still in large part a rural country is perhaps of more importance. Population is scattered, the industrial organization is simple, and as a consequence the needs and opportunities for public activity are few. Moreover the compactly settled districts are organized as villages and cities; and there provision is made for the more pressing public needs, which form a large part of the activity of the New England towns. The smaller relative wealth of the Southern states is another factor in the slight development of local functions. This restricts the amount of taxation for purposes of local government and thus keeps the scope of public activity within narrow limits.

Some of these conditions, however, are changing. Mining in West Virginia and Alabama, the establishment of cotton factories as well as other manufacturing industries in a number of states, and immigration from Northern states and foreign countries are adding greatly to the wealth of these communities and altering the economic basis of political institutions in many ways. The general result will be to increase the importance of local government, both in the counties and in the county districts.

North Carolina in 1919 passed an act for the incorporation of rural communities with broad powers of local self-government. Up to 1926 about a dozen of these rural communities had been organized, but they have not developed important activities; and the law has been repealed.[11]

It would probably be unwise, and perhaps futile, to attempt again to import bodily the institutions of the Northern states. The former effort failed because the fundamental conditions of economic and social life in the Southern states were different from those in the Northern states. The new conditions in the South will still be different from those in the North; and in all cases local institutions should be developed to suit their own environment. With the changing conditions it seems questionable whether emphasis should be placed upon the smaller administrative districts; the tendency seems to be to transfer functions to the county or other larger administrative area.

Western States.—In the Western states the principal subdivisions of the counties are most commonly called precincts. But in Montana, and some parts of Nevada, they are known as townships, and in California, as judicial townships. In these sparsely settled states the average area of such districts is much larger than the congressional township or the district in the Southern states; at the same time, their population is often very scant. Cities and villages are, however, generally included in the county districts; but in some cases, as Utah, cities are co-extensive with one or more precincts.[12]

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[11] T. B. Manny, *Rural Municipalities*, ch. 14.

One or more justices of the peace and constables are elected in each of these precincts or townships. The powers and duties of these officers are much the same as in the Central states. The civil jurisdiction of the justices generally includes cases where as much as $300 is involved, which is higher than in most of the states to the east. Their criminal jurisdiction covers the usual minor breaches of the peace and other misdemeanors. Constables have the customary ministerial duties in executing justices' warrants; and in Utah they are also called on to act as pound-keepers for stray animals. Ordinarily each justice's district is also an election precinct, for which election officers are appointed. In California, however, townships may be divided into election precincts.

School districts are established by the county boards or by the county superintendents of schools. Rural school districts usually contain only a single school, but the consolidation movement has made rapid progress in some of these states. Road districts, which are formed by the county boards, with overseers elected or appointed by the county board, were formerly used. The county board had general control over such districts as in the Southern states, each member of the board acting as road supervisor over the overseers within his district. While this method is still used, the county is taking a more important part in highway administration and the local road districts are consequently coming to be of less importance. Special districts for irrigation and other purposes are also organized in these states.

These school, road and special district officers are more often locally elected in the Western states than in the Southern states. But this decentralizing tendency has not reached the point of establishing a general system of organized townships in any of these states. In 1895 the state of Washington enacted an optional law for the organization of civil townships, but in only two counties have they been established. Throughout the Western states the county is the main unit of local government, and the county officials are the all-important local authorities. In proportion to population the activity of the county in this section is far beyond that in any other section of the United States.

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[12] The laws of the state provide that cities having a population of 40,000 or over are not to be divided into precincts but shall constitute one precinct. *Comp. Laws Utah,* 1917, sec. 1454.

Social and economic conditions are very different in the West from those in the South, and the same explanations will not serve to account for the absence of the organized township in both regions. One factor the two sections have in common,—the ownership of land in large tracts. But neither tenant farming nor negro population is present in any large degree in the Western states. Probably the most important factor in the Western states is the sparse and scattered population. The number of people within a geographical township or any district of similar area is in most cases too small to form the basis for any effective organized government. Nor can a larger district be taken without departing from the essential idea of the town as a district whose inhabitants can come together conveniently. The widely scattered population also tends to make each person more independent of others, and there is less opportunity for common interests or the development of public activities.

Moreover a large proportion of the limited population is in mining and other compactly settled communities, for which city and village governments have been organized. With the needs of these provided for, there is comparatively little that could be done by township governments in the strictly rural districts. The successful development of irrigation projects has tended to increase the rural population, and this has also offered a new field for public activity. But in most cases the need has been met by special districts.

SPECIAL DISTRICTS [13]

The special district is a relatively new agency of rural local government. Such districts are most common in the South and West —a fact which may be accounted for in part by the absence of townships or other active districts of local government smaller than the county. Many functions formerly entrusted to counties, towns, townships and county districts are now under the control of these special districts. The creation of special road, health, school, and other districts, which perform functions formerly in the hands of the other local units, has tended to decrease the importance of the latter. Thus in some states the special district assumes an important place in a study of rural local government.

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[13] For the use of special districts or ad hoc authorities in metropolitan areas see Chapter XXIV; for the various types of special school districts see Chapter XVI.

Forty-seven varieties of special districts which exist, under eighty-nine different titles, have been listed. The states having the largest variety of such districts are California with twenty-eight; Arkansas with eighteen; Washington with thirteen; and Illinois with twelve.[14] Special school, highway, drainage, and irrigation districts are provided for in more states than any other kinds of districts. Road, irrigation, and drainage districts in several states; health districts in Illinois, Michigan, and New York; agricultural development districts in North Carolina; diking districts in Oregon and Washington; mosquito abatement districts in Illinois, Florida, and California; herd districts in Idaho; and tunnel districts in Oregon—all indicate the variety of functions performed by special districts.[15]

The creation of special districts may be accounted for in part by the inadequacy of the older governmental areas to meet the problems of local government which result from the increasing complexity of rural life.[16] Many problems of local government are not coextensive with the arbitrary political boundaries of counties and townships. The use of special districts, with boundaries corresponding to the area of benefit or need, sometimes enables more adequate methods to be employed.

Such districts have also been created in some cases to provide a more adequate method of financing local governmental services. They have been used to overcome constitutional and statutory limitations on taxation and bonded indebtedness of counties and townships. By the creation of a new governmental unit to assume a function formerly vested in counties and townships, additional revenue has been secured for undertakings considered to be important. It is also felt that a special district, created for performing a particular function, will tend to remove this service from politics and thus result in a more satisfactory solution.[17]

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[14] F. H. Guild, ''Special Municipal Corporations,'' 18 *Nat. Mun. Rev.*, 319 (1929). Also see: Charles Kettleborough, ''Special Municipal Corporations,'' 9 *Amer. Pol. Sci. Rev.*, 751-759 (1915); F. H. Guild, ''Special Municipal Corporations,'' 12 *Amer. Pol. Sci. Rev.* 678-684 (1918); *ibid.*, 14 *Amer. Pol. Sci. Rev.* 286-291 (1920); W. M. Olson, ''The Value of Sanitary Districts,'' 27 *American City* 557-563 (1922).

[15] *Cahill's Ill. Rev. Stat.*, 1927, ch. 65a, secs. 69 ff.; *Comp. Laws Mich.*, 1922 Supp., secs. 5090 (1)–5090 (9); *Cahill's Consol. Laws N. Y.*, 1923, ch. 46, secs. 20 ff.; *N. C. Code*, 1927, secs. 4959-4984; *Remington's Comp. Stat. Wash.*, 1922, vol. 2, secs. 4236 ff.; *Ore. Laws*, 1920, vol. 2, secs. 7281 ff.; *Fla. Cum. Supp.*, 1925 secs. 2159 (1)–2159 (11); *Gen. Code Calif.*, 1923, Part I, Act 3701; *Idaho Comp. Stat.*, 1919, vol. 1, secs. 2011 ff.; *Ore. Laws*, Supp. 1921-1927, pp. 1522 ff.

[16] See Charles Kettleborough, ''Special Municipal Corporations,'' 8 *Amer. Pol. Sci. Rev.* 614-621 (1914).

Legal Status of the Special District.—Special districts which are established to perform a particular function of local government are usually held to be quasi corporations. They are administrative districts of the state, or as noted by the Supreme Court of Missouri, the special district "is a governmental agency, exercising only public governmental functions, and, as such, to be classed with counties, . . ."[18]

The Supreme Court of the United States, in considering the legal status of a drainage district, has said that it is "constituted a political subdivision of the state for the purpose of performing prescribed functions of government."[19] Such a district has been held by the Supreme Court of Mississippi to be "a political subdivision of the state," and by the Supreme Court of Tennessee to be "an arm or instrumentality of the government."[20] The Tennessee court went on to say, however, that "it is not merely an arm or instrumentality of the county," but a "state agency," the power to create which had been delegated to the county.

The legal status of special road districts is similar to that of drainage districts. The United States Circuit Court of Appeals for the Eighth Circuit has stated that a road district "is a public corporation or quasi public corporation."[21] And in Missouri it has been classed as "a quasi political subdivision" of the county.[22] The Supreme Court of Idaho has held that a highway district "is not a political municipality" but a quasi municipal corporation created not for purposes of government, but for a special purpose.[23] Such a district has been held by the Supreme Court of Missouri, however, to be a municipal corporation, though "not in the limited sense applied to certain cities, but in the general sense in that it exercises governmental functions. It is a political subdivision of the state."[24]

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[17] Frederick P. Gruenberg, "Incorporated Districts—Blessings or Drawbacks?" 28 *American City* 593-595 (1923).

[18] *Sigler v. Inter-River Drainage District*, 279 S.W. (Mo.) 50 (1925). Also see *Wabash Ry. Co. v. South Daviess County Drainage Dist.*, 12 Fed. (2d) 909 (1926).

[19] *Houck v. Little River Drainage Dist.*, 239 U. S. 254 (1915).

[20] *Tallahatchie Drainage Dist. v. Yocona-Tallahatchie Drainage Dist.*, 114 So. (Miss.) 246 (1927); *Standard Oil Co. v. National Surety Co.*, 107 So. (Miss.) 559 (1926); *Pritchard v. Johnson-Toby Construction Co.*, 296 S.W. (Tenn.) 17 (1927); *State v. Blair*, 151 S.W. (Mo.) 148 (1912); *D'Arcourt v. Little River Drainage Dist.*, 245 S.W. (Mo.) 394 (1922); *De Pew v. Venice Drainage Dist.*, 105 So. (La.) 78 (1925).

[21] *Road Improvement Dist. v. Guardian Savings and Trust Co.*, 298 Fed. 272 (1924).

[22] *Lamar v. Bolivar Special Road Dist.*, 201 S.W. (Mo.) 890 (1918).

The legal status of the other varieties of special districts is similar to that of drainage and highway districts. Thus special school districts, levee districts, irrigation districts, fire districts, public utilities districts, and agricultural districts have all been held to be quasi corporations.[25] The distinction which the courts draw between such districts and municipal corporations is, in many cases, not great. Sanitary districts have been held to be municipal corporations by the Supreme Court of Illinois, but "in their constitution and purpose, are unlike any class of municipal corporations heretofore existing in the state."[26] The Supreme Court of Washington has stated that, "generally speaking, all public corporations performing any duties within a restricted area are, to that extent at least, municipal corporations," and that water districts are, "to a limited extent," municipal corporations.[27] In considering the legal status of an agricultural district, the Supreme Court of Alabama has stated that, "though not technically a municipal corporation, it has much of the character and attributes of such corporation."[28]

It may thus be seen that the special district is usually a quasi corporation, and while in the nature of a public corporation, is not a municipal corporation in the proper sense of that term.[29] Park districts in Illinois and Minnesota, drainage districts in Missouri, and irrigation districts in California, however, have been held to be corporations for municipal purposes.[30] And the Supreme Court of Washington has held that in that state "there can be no doubt that irrigation districts are municipal corporations with such powers as are conferred upon them by statute." [31]

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[23] *Shoshone Highway Dist. v. Anderson,* 125 Pac. (Idaho) 219 (1912); *Strickfaden v. Green Creek Highway Dist.,* 248 Pac. (Idaho) 456 (1926).

[24] *State v. Thompson,* 285 S.W. (Mo.) 57 (1926). Also see *State v. Little River Drainage Dist.,* 236 S.W. (Mo.) 15 (1921); *Harris v. Wm. R. Compton B. and M. Co.,* 149 S. W. (Mo.) 603 (1912).

[25] *State v. St. Paul,* 150 N.W. (Minn.) 389 (1914); *Campbell Lumber Co. v. Levee Dist.,* 172 S.W. (Mo.) 64 (1914); *East Providence Water Co. v. Public Utility Commission,* 128 Atl. (R. I.) 556 (1925). *Dillard v. Webb.* 55 Ala. 468 (1876). *In re Bonds of quasi Public Utilities Dist.,* 235 Pac. (Calif.) 1004 (1925). Also see Eugene McQuillin, *Municipal Corporations* (2nd ed.), vol. 1, sec. 135.

[26] *People v. Nelson,* 27 N.E. (Ill.) 217 (1890); cf. *In re Werner,* 62 Pac. (Calif.) 97 (1900).

[27] *Drum v. University Place Water Dist.,* 258 Pac. (Wash.) 505 (1927). The statutes of Oregon classify highway districts as municipal corporations. *Ore. Laws,* Supp. 1921-27, Part II, p. 1170.

[28] *Dillard v. Webb,* 55 Ala. 468 (1876).

Petitions for Special Districts.—The initiative in the formation of special districts is usually with the landowners or the voters in the proposed district. A petition signed by a certain percentage, which in most cases is a majority in land value, acreage, or number of landowners, or of voters, is presented to some specified authority, usually the county board, asking that the district be formed.

Petitions for road improvement districts in Oklahoma must be signed by a "majority in acreage of landowners" while in Tennessee twenty-five per cent of the landowners is sufficient.[32] The number of signers asking for the establishment of a levee district in the latter state is sixty per cent of the landowners. Special road and bridge districts in Florida may be formed upon initiation by twenty-five per cent of the duly registered voters.[33]

Drainage districts in Virginia may be formed upon petition by two-thirds of the owners of land in the proposed district. Petitions for such districts in Oklahoma need be signed by only five residents of the county affected by the proposed improvement, and who will be assessed for the construction thereof. In Mississippi, the petition must be signed by 20 per cent of the owners of real property. Two-fifths of the taxpayers residing within the proposed district must petition for a drainage district in Kansas. Such districts may be formed in Montana upon petition of a majority of the adult owners of land, who represent one-third in area of the land within the district.[34]

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[29] *In re Werner*, 62 Pac. (Calif.) 97 (1900); *William T. Joyce Co. v. Police Jury*, 83 So. (La.) 587 (1919); *Indian Cove Irrigation Dist. v. Prideaux*, 136 Pac. (Idaho) 618 (1913). It should be noted, however, that in one respect special districts usually differ from other quasi corporations such as counties and townships, and resemble municipal corporations such as cities and villages. They are for the most part (except school districts) voluntary organizations established by inhabitants of the district.

[30] Eugene McQuillin, *Municipal Corporations* (2nd ed.), vol. 1, sec. 134.

[31] *Peters v. Union Gap Irr. Dist.*, 167 Pac. (Wash.) 1085 (1917).

[32] *Comp. Stat. Okla.*, 1926 Supp., secs. 10230-1 ff.; *Ann. Code Tenn.*, Supp. 1926, secs. 1682 10 ff.

[33] *Fla. Cum. Stat.*, 1925, secs. 1647 ff.

Agricultural development districts in North Carolina may be formed only upon petition by all of the landowners in the district. Petitions for district tuberculosis hospitals in Ohio need be signed by only two per cent of the voters of the proposed district. Five per cent of the legal voters within a proposed mosquito abatement district in Illinois may petition to have the question of its establishment submitted to the voters. Fifteen per cent of the freeholders of the proposed district must petition for such districts in Florida. One hundred legal voters is a sufficient number to sign a petition for a park district in Illinois.[35]

While the initiative in the formation of special districts is usually with the landowners within the proposed district, irrigation districts may be established in Utah upon petition by the landowners in the district or by the governor of the state upon recommendation of the state engineer.[36] And in Ohio, where application for the creation of park districts is made to the probate judge of the county, such petition must either be signed by a majority of the resident electors within the proposed district, or in lieu thereof, it may be authorized by resolution adopted by any board of township trustees or city council or other legislative body within the proposed district.[37]

The petitioners for the establishment of a special district are often required to file a bond stipulating that they will pay all court costs and legal advertising, and cost of preliminary surveys and plans, where provided for, that may accrue in the event that the district is not established. If the petition results in the establishment of the district, the money is returned. The amount of the bond or deposit varies. Usually the amount of the bond is fixed by some officer or authority as the county board, the county clerk, or the county judge. Thus the bond required in Virginia of petitioners for a drainage district is such amount as the clerk of the circuit court of the county may approve.[38] In some cases the amount is fixed by statute. The bond required of petitioners for drainage districts in North Carolina is fifty dollars per mile for each mile of the ditch or proposed improvement.[39] In Texas, the petitioners for a water control and preservation district must make a five hundred dollar deposit with the clerk of the commissioners court; and for a fresh water supply district the required deposit is one hundred dollars.[40]

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[34] *Va. Code,* 1924, secs. 1737 ff.; *Comp. Okla. Stat.,* 1921, vol. 2, secs. 6039-6091; *Hemingway's Miss. Code,* 1927, vol. 2, secs. 4767 ff.; *Rev. Stat. of Kas.,* 1923, 24-401 ff.; *Rev. Codes Mont.,* 1921, vol. 2, secs. 7265-7364.

[35] *N. C. Code,* 1927, secs. 4959-4984; *Page's Ohio Code,* vol. 1, secs. 3148 ff.; *Cahill's Ill. Rev. Stat.,* 1927, ch. 65a, secs. 89 ff.; *Fla. Cum. Stat.,* 1925, secs. 2159 (1)–2159 (11); *Cahill's Ill. Rev. Stat.,* 1927, ch. 105, secs. 295 ff.

[36] *Comp. Laws Utah,* 1917, vol. 1, secs. 3501 ff.

[37] *Page's Ohio Code,* 1926, vol. 1, secs. 2976-1 ff.

The Creation of Special Districts.—The next question which arises is as to the authority to which these petitions are presented; and does this authority have the power to pass upon the establishment of such district or must it submit the question to the voters of the proposed district? If the final power to create such district is vested in this authority what provision is made for public hearing; and must a preliminary survey be made before the final order creating the district is issued? The practice relative to these questions varies in different states and for different classes of districts.

Petitions asking that a special district be formed are usually presented to the county board. In some cases the board is merely authorized to pass upon the legal sufficiency of the petition and to order an election to determine whether the proposed district shall be formed. Thus petitions for special road and bridge districts in Florida are presented to the board of county commissioners. If the petition is found to be sufficient an election is ordered to determine whether the district shall be created.[41] When petitions are presented to the county board in Colorado asking that an irrigation district be formed it must call an election if the petition fulfils the legal requirements.[42] The affirmative vote in Idaho must be two-thirds, when, upon petition to the board of county commissioners by one-fourth of the landowners, the question of the establishment of an irrigation district is submitted to the voters.[43]

In some cases it is not necessary for the county board to submit the question to the voters, but the board is vested with final authority to determine whether such district shall be created. The county commissioners in Oklahoma, upon petition signed by five or more residents of the county affected by the proposed improvement, and who will be assessed for the construction thereof, may establish drainage districts. They may do this when they "deem it to be conducive to the public health, or of public utility, or of benefit to agricultural interests or to the soils of the lands affected, or when the same is necessary to drain, any lots or lands or public or corporate roads or railroads." If the commissioners find that the improvement will not do these things, the petition for the formation of the district requires the signature of 50 per cent of the owners of the land affected.[44]

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[38] *Va. Code,* 1924, sec. 1738.

[39] *N. C. Code,* 1927, sec. 5315.

[40] *Rev. Civil Stat., Texas,* 1925, vol. 2, arts. 7812, 7883.

[41] *Fla. Cum. Stat.,* 1925, secs. 1647 ff.

[42] *Comp. Laws Colo.,* 1921, secs. 1960 ff.

[43] *Idaho Comp. Stat.,* 1919, vol. 1, secs. 4313 ff.

Rural improvement districts may, upon petition by 60 per cent of the freeholders affected, be created by boards of county commissioners in Montana whenever the public interest or convenience may require. Such districts may be created in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing and maintaining sanitary and storm sewers, light systems, water works plants, sidewalks and such other special improvements as may be petitioned for.[45] Herd districts in Idaho are established by the county commissioners, without any popular vote, upon petition of a majority of the qualified electors of the district.[46]

Such petitions are in some cases presented to some court or judicial officer. As in the case of the county board, final power to order the district formed is sometimes vested in the court, while in other cases it must submit the question to popular vote. A few cases illustrative of both methods will be noted.

Petitions for the formation of road improvement districts in Arkansas are presented to the county court. After public notice, a hearing is held upon such petition and if it appears to the court that there are a sufficient number of signers, and that it is to the "best interest of the county and the landowners in said district," it is the duty of the court to make an order establishing the district.[47] Sanitary agricultural improvement districts may also be formed by the county court in that state, after public hearing, if it is of the opinion that the establishment of the district will be in the "interest of the public health, convenience, welfare or utility and benefit of the landowners."[48]

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[44] *Comp. Okla. Stat.*, 1921, vol. 2, secs. 6039-6091.

[45] *Rev. Codes Mont.*, 1921, vol. 1, secs. 4574-4603.

[46] *Idaho Comp. Stat.*, 1919, vol. 1, secs. 2011 ff.

[47] *Digest of Stat. of Ark.*, 1921, secs. 5399-5401.

Drainage districts in Missouri are organized by the circuit court upon petition of a majority of the acreage in any contiguous body of swamp or wet lands. After public hearing the court may dismiss the proceedings or it may declare the drainage district to be a public corporation.[49] Drainage districts may also be formed in Montana, Nebraska, and New Mexico by the district court.[50] Such districts are established in North Carolina by the clerk of the superior court, and in Virginia and Wisconsin by the circuit court.[51]

Irrigation districts are formed by the district court of the county in Wyoming and Montana.[52] Conservancy districts in Oklahoma are established by the judge of the district court; levee districts in Missouri by the circuit court; and park districts in Ohio by the probate judge.[53]

The courts do not in all cases have final authority to order such special districts established. In some cases they must submit the question to popular vote. Thus when petitioned by one hundred legal voters, the county judge in Illinois must submit to the voters the question of the creation of a park district. When petitioned by five per cent of the legal voters within a proposed mosquito abatement district the county judge must submit the question to popular vote.[54]

Power to establish special districts is in some cases vested in state authority. The state commissioner of highways in Oklahoma may, upon petition, establish road improvement districts if, after public hearing, he deems it "to the best interest of the county and the landowners in said district." The law provides that the order of the state commissioner of highways establishing a road improvement district "shall have the force and effect of a judgment and shall be deemed conclusive."[55]

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[48] *Supp. to Digest of Stat. of Ark.*, 1927, secs. 5636.

[49] *Rev. Stat. Mo.*, 1919, vol. 2, ch. 28; *Supp. to Mo. Stat.*, 1927, pp. 140 ff.

[50] *Rev. Codes Mont.*, 1921, vol. 2, secs. 7265-7364; *Comp. Stat. Nebr.*, 1922, secs. 1744-1862; *N. Mexico Stat.*, 1915, secs. 1877-1958.

[51] *N. C. Code*, 1927, secs. 5312-5382; *Va. Code*, 1924, secs. 1737 ff.; *Wis. Stat.*, 1927, vol. 1, ch. 89.

[52] *Wyo. Comp. Stat.*, 1920, secs. 951 ff.; *Rev. Codes Mont.*, 1921, vol. 2, secs. 7166 ff.

[53] *Comp. Okla. Stat.*, 1926 Supp., secs. 6091-14 ff.; *Rev. Stat. Mo.*, 1919, vol. 2, secs. 4597 ff.; *Page's Ohio Code*, vol. 1, secs. 2976-1 ff.

[54] *Cahill Ill. Rev. Stat.*, 1927, ch. 105, secs. 295 ff.; *ibid.*, ch. 65a, secs. 89 ff.

Public Hearings and Preliminary Surveys.—Where special districts may be established by the county board or the courts upon petition, it is often prescribed that provision be made for public hearing. Thus in Montana, before the county commissioners may establish a rural improvement district, they must pass a resolution of intention so to do, "which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of improvements which are to be made, designate the name of the engineer who is to have charge of the work, and an approximate estimate of the cost thereof." Such resolution of intention must be published for ten consecutive days in a daily newspaper or in two issues of a weekly newspaper nearest to the place where such improvement district is to be created, and a copy of the notice must be posted in three public places in the district and a copy of the notice must be mailed to every person, firm or corporation owning property within the proposed district. Protests against the improvement must be made in writing, the decision of the board in passing upon such protests being "final and conclusive." In case the owners of one-half of the area to be assessed for such improvement protest, no further proceedings may be taken for a period of six months.[56] This illustrates the detail with which the statute regulates the provision for notice.

In some cases not only is there provision for notice and public hearing but a preliminary survey is required. Thus in North Carolina, where agricultural development districts are established by the clerk of the superior court upon petition by all of the landowners in the proposed district, provision is made for such survey. When such petition is presented to the clerk he must appoint a board of viewers, composed of three members, one a competent civil engineer and the other two practical agriculturists. They must file a written report within two weeks of their appointment. If they report that the project is practicable, and that it will be for the public welfare of the community, the report is submitted to the state geologist. The state geologist designates an engineer, an attorney, a forester, and a soil expert to make further investigation and report. These reports, data, and plans are then considered by the state geologist, and if he approves of the same he so certifies to the clerk of the court, who then declares the district established.[57]

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[55] *Comp. Okla. Stat.*, 1926, ch. 85a.

[56] *Rev. Codes Mont.*, 1921, vol. 1, secs. 4575 ff.

Petitions for drainage districts in Texas are presented to the commissioners court. After public notice, a hearing is held on such petition. If it appears to the court at such hearing that the drainage of the proposed district ''is feasible and practicable, and that it is needed, that the drainage would be conducive to the public health, or would be a public benefit or a public utility,'' it must appoint a competent civil engineer, who is entitled to such assistants as may be necessary, to make preliminary plans. A public hearing is then held, after public notice, on this report, and if the commissioners court is favorable, the question of the district is submitted to the voters thereof.[58]

In Oklahoma, where the authority of the county commissioners to establish drainage or improvement districts is final, a preliminary survey must be made before the final hearing is held. The commissioners must appoint as viewers three resident freeholders of the county who are not interested in the proposed district. The viewers and the county surveyor proceed to investigate the proposed improvement and report to the county commissioners whether it is practicable and necessary. If, after notice, and at a public hearing, the commissioners find in favor of the proposed improvement, the district is established.[59] Provision is also made in Virginia for such a preliminary survey before levee or drainage districts are established by the circuit court.[60]

Before a hearing is held by the county commissioners in Idaho upon a petition for the organization of an irrigation district, a copy of the petition and all maps and other papers filed with the same must be submitted to the office of the department of reclamation. It is the duty of the department to examine this material, and if it deem it necessary, to investigate the proposed district, and to report to the county commissioners in such form as it considers advisable. If they decide to proceed with the organization of the district, the question of its establishment is then submitted to the electors of the district.[61] In Florida, when a petition for the organization of a mosquito control district is submitted to the board of county commissioners, it must be accompanied by a statement of approval from the state board of health, which must have examined the plans contemplated.[62]

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[57] *N. C. Code,* 1927, secs. 4959-4964.

[58] *Rev. Civil Stat., Texas,* 1925, vol. 2, arts. 8097 ff.

[59] *Comp. Okla. Stat.,* 1921, vol. 2, secs. 6039 ff.

[60] *Va. Code,* 1924, secs. 1737 ff.

The Government of Special Districts.—Various methods are used to select the governing authorities of special districts. In some cases the county board acts as the governing authority for special districts; in some, a board of commissioners is selected by the county board; in some the authority is elected or selected at a meeting of the voters of the district; in others it is appointed by the courts or some judicial officer; and in a few cases governing boards of special districts are selected by state authority. The size of governing boards of such districts varies, the usual number of trustees or commissioners being three or five.

Commissioners for drainage districts in Texas are appointed by the commissioners court, unless a majority of the real property tax payers of the district petition asking that they be elected.[63] Boards of supervisors in Mississippi appoint three commissioners for special road districts in that state; they must be qualified electors and owners of real estate in the district.[64] In Louisiana, three of the five commissioners for drainage districts are appointed by police juries. The other two commissioners are appointed by the governor of the state. The commissioners, or their wives, must be assessed for real estate to the value of five hundred dollars.[65]

The method which is most often used for the selection of governing boards of special districts is popular election. In some cases these boards are selected at a meeting of the owners of land within the district. Boards of supervisors for drainage districts in Oregon are selected by the owners of land in the district at a meeting called by the county clerk.[66] In Missouri, a board of supervisors of five members is elected for drainage districts at a meeting of the owners of real estate in the district, called by the circuit clerk of the county. Drainage districts in that state are formed by the circuit court upon petition of the owners of a majority of the acreage in the proposed district.[67]

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[61] *Idaho Comp. Stat.,* 1919, vol. 1, secs. 4313 ff. Cf. *Digest of Stat. of Ark.,* 1921, sec. 5400; *Comp. Laws Utah,* 1917, secs. 3501 ff.

[62] *Fla. Cum. Stat.,* 1925, sec. 2159 (2).

[63] *Rev. Civil Stat., Texas.* 1925, vol. 2, art. 8119.

[64] *Hemingway's Miss. Code,* 1921, Supp., sec. 7162.

[65] *Const. and Stat. of La.,* 1920, vol. 2, p. 1633.

[66] *Ore. Laws,* 1920, vol. 2, secs. 7247 ff.

Local improvement districts in Montana are formed by the board of county commissioners. A committee of supervisors composed of three members is selected by the owners of land within the proposed district. It is the duty of this committee and the county surveyor to examine and survey the proposed improvement and report to the county commissioners. If the district is created, the contract is let after competitive bids by the committee of supervisors to the lowest and best bidder. The committee of supervisors and county surveyor together appoint some "suitable and competent person" as inspector of such work as it progresses. It is the duty of the inspector to supervise the work at all times and to report to the surveyor and committee of supervisors.[68]

The county commissioners in some cases act as the governing board of the special district. Thus in Florida, the work in special road and bridge districts is done under the supervision of the board of county commissioners. It must have plans and specifications prepared and let the contract to the lowest responsible bidder.[69] The work in rural improvement districts in Montana is also under the jurisdiction of the county commissioners. An engineer is appointed by the commissioners to have charge.[70]

As has been pointed out above, petitions asking for the formation of special districts are in some cases presented to the courts. Along with the power to order that such districts be established, in some cases they may appoint the governing authorities. Three commissioners for drainage districts are appointed by the county judge in New Mexico. Commissioners for such districts in Virginia and Wisconsin are appointed by the judge of the circuit court. Commissioners for irrigation districts in Montana are appointed by the district court. Two of the commissioners for agricultural development districts in North Carolina are appointed by the clerk of the superior court and they select the third member. The county court appoints commissioners for improvement districts in Arkansas; but if the petitioners have suggested the names of the commissioners to be appointed, the court, unless good and valid objections are made, must appoint such persons.[71]

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[67] *Rev. Stat. Mo.*, 1919, vol. 2, ch. 28.

[68] *Rev. Codes Mont.*, 1921, vol. 1, secs. 1676-1702.

[69] *Fla. Cum. Stat.*, 1925, secs. 1647 ff.

[70] *Rev. Codes Mont.*, 1921, vol. 1, secs. 4574-4603.

Mosquito abatement districts are established in Illinois and Florida by popular vote. In Illinois, the board of trustees is appointed by the county judge, and in Florida it is elected by the voters of the district.[72] The three commissioners for park districts in Ohio are appointed by the probate judge; in Illinois, five commissioners are elected for such districts.[73]

The selection of the governing boards of special districts is in some cases vested in state authorities. Three commissioners for road improvement districts in Oklahoma are appointed by the state commissioner of highways. They must be owners of real property in the district and "men of business ability."[74] Upon the formation of highway improvement districts in Oregon, seven trustees are appointed by the governor. After the expiration of their term of office, trustees are elected by the voters of the district.[75] Commissioners of drainage districts in Massachusetts are appointed by the state drainage board.[76] In Wisconsin, commissioners of drainage districts must appoint as district engineer one who is approved by the chief engineer of the state.[77]

Special District Finances.—According to the census reports on Wealth, Debt and Taxation for 1922, the general property tax is the main source of revenue for special districts. This is especially true for special school districts, where less than half of one per cent of the tax revenue reported was from other sources. For other special districts, about 85 per cent of the tax revenue was from the general property tax. Small amounts were received from special taxes, poll taxes and licenses and permits; but the principal source other than the general property tax, was special assessments, from which more than ten per cent of the tax revenue of special districts, other than school districts, was derived.

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[71] *N. Mexico Stat.*, 1915, secs. 1877-1958. Cf. *Wyo. Comp. Stat.*, 1920, sec. 1012; *Va. Code*, 1924, secs. 1737 ff.; *Wis. Stat.*, 1927, vol. 1, ch. 89; *Rev. Codes of Mont.*, 1921, vol. 2, secs. 7166 ff.; *N. C. Code*, 1927, secs. 4959-4984; *Supp. to Digest of Stat. of Ark.*, 1927, sec. 5636.

[72] *Cahill Ill. Rev. Stat.*, 1927, ch. 65a, secs. 89 ff.; *Fla. Cum. Stat.*, 1925, secs. 2159 (1)–2159 (11).

[73] *Page's Ohio Code*, vol. 1, secs. 2976-1 ff.; *Cahill's Ill. Rev. Stat.*, 1927, ch. 105, secs. 295 ff.

[74] *Comp. Okla. Stat.*, 1926 Supp., secs. 10230-1 ff.

[75] *Ore. Laws, Supp.* 1921-27, pp. 1169 ff.

[76] *Gen. Laws of Mass.*, 1921, ch. 252, secs. 1-5.

[77] *Wis. Stat.*, 1927, vol. 1, ch. 89.

Special assessments were of most importance for drainage districts, yielding more than two-thirds of the tax revenue for such districts. They were also used to a considerable extent for irrigation districts, road districts, levee districts and others. Special assessments were of most importance in Arkansas, Iowa, Mississippi, Missouri, Ohio, and Washington.[78]

Provision is also made in most states for loans secured by bonds issued by special districts, payable by general taxation or special assessments. There are usually requirements for a popular vote for the issue of bonds, and limitations on the amount, in proportion to the assessed valuation of property. Thus in Oregon bonds of highway improvement districts may never exceed, in the aggregate, six per cent of the valuation for state and county purposes of all property within the limits of the district. Drainage districts in Texas may issue bonds not to exceed in amount one fourth of the assessed valuation of the real property in the district.[79]

From the census reports for 1922, about two-thirds of the total debt of special districts was for school districts; but this was a smaller proportion than for tax revenues; and other districts make relatively greater use of bond issues for carrying out public improvements. Road districts had the largest debt for special districts other than school districts; and these were of most importance in Mississippi and Texas. Special district debts were also of more than usual amounts for irrigation districts in California and Colorado, for levee districts in Louisiana; and special assessment debt for drainage districts in Iowa, Missouri, Arkansas, and Mississippi, and for other districts in Ohio, Illinois, Nebraska, California, and Washington.[80]

Some statutory provisions as to the use of the general property tax and special assessments by special districts may be noted. In Texas, the county tax assessor and collector have the same powers and are governed by the same rules, regulations and proceedings in the assessment and collection of taxes for drainage districts as are provided for the collection of state and county taxes. Special road and bridge taxes in Florida are also assessed, equalized and collected upon the taxable property within the district by the same officers and in the same manner as is provided by law for the assessment, equalization and collection of other county taxes. The general property tax is also used for highway districts in Oregon, health districts in California, mosquito abatement districts in Illinois and California, irrigation districts in Nebraska, and park districts in Illinois.[81] A statutory limit is usually placed upon the tax rate for special districts.

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[78] *Census Reports on Wealth, Debt and Taxation*, 1922: *Taxes Collected*, pp. 142-145.

[79] *Ore. Laws, Supp.* 1921-27, Pt. II, p. 1175; *Rev. Civil Stat., Texas*, 1925, vol. 2, Art. 8127. Also see: *Comp. Stat. Nebr.*, 1922, sec. 2869; *Comp. Laws Colo.*, 1921, secs. 1960 ff.; *Remington's Comp. Stat. Wash.*, 1922, vol. 2, sec. 7432; *Supp. to Comp. Laws N. D.*, 1913-25, sec. 8247a 1–8247a75; *Rev. Codes Mont.*, 1921, vol. 2, sec. 7210.

[80] *Census Reports on Wealth, Debt and Taxation*, 1922: *Public Debt*, pp. 180-183.

In some cases a part of the cost of improvements in special districts is paid by special assessment and the remainder by a general property tax. In the development and improvement of land for park purposes, boards of park commissioners in Ohio may assess such portion of the cost as they may deem equitable, but not to exceed fifty per cent of the total cost, upon specially benefited lands. A general property tax is levied upon all taxable property within the district to cover the remainder of the cost.[82]

There is great variation in the method of levying special assessments. The board of supervisors of the county in which a drainage district is formed in California appoints three disinterested persons residing in the county to view and assess, upon the lands situated in the district, a charge proportionate to the whole expense, and to the benefit which will result from such work. All lands benefited by public drains, levees or improvements in Oklahoma are assessed in proportion to the benefits derived. Assessments are made by a board of viewers composed of three resident freeholders of the county who are not interested in the construction of the work. This board of viewers is appointed by the county commissioners.[83]

A board of viewers for drainage districts is appointed by the circuit court in Virginia to examine the land in the district and to classify it with reference to the benefit it will receive from the construction of the improvement. In the case of drainage, "the degree of wetness of the land, its proximity to the ditch or a natural outlet, the fertility of the soil, and benefits derived from flood waters being diverted" must be considered in determining the amount of the benefit. The land must be separated into five classes according to the benefits derived.[84] The board of viewers to levy special assessments on lands in drainage districts in North Carolina is appointed by the clerk of the superior court. The board is composed of a "disinterested and competent civil and drainage engineer and two resident freeholders of the county or counties in which the lands are located." The land in the district is classified in five classes with reference to the benefit each will receive.[85]

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[81] *Rev. Civil Stat., Texas,* 1925, vol. 2, Art. 8140; *Fla. Cum. Stat.,* 1925, sec. 1653; *Ore. Laws,* Supp. 1921-27, p. 1176; *Gen. Laws Calif.,* 1923, Pt. II, Act 6253; *Cahill Ill. Rev. Stat.,* 1927, ch. 65a, secs. 89 ff.; *Gen. Laws Calif.,* 1923, Pt. I, Act 3701; *Comp. Stat. Nebr.,* 1922, secs. 2871-72; *Cahill's Ill. Rev. Stat.,* 1927, ch. 105, secs. 295 ff.

[82] *Page's Ohio Code,* vol. 1, secs. 2976-9 ff.

[83] *Gen. Laws Calif.,* 1923, Pt. I, Act 2200, sec. 9; *Comp. Okla. Stat.,* 1921, vol. 2, secs. 6044-6052.

The county court in Tennessee appoints for road improvement districts, three commissioners, one of whom must be a competent civil engineer and two of whom must be freeholders of the county who do not live within the district and are not interested therein. It is their duty to assess the benefits against the property in the district. After the district has been located and established, the governing board is appointed by the county court; it, however, must be composed of owners of land within the district.[86] The governing board of special highway districts in Wisconsin, which is appointed by the circuit court, also assesses and apportions a part of the cost of construction against the several benefited tracts of land in the district in proportion to the benefit which the commission determines will be caused by the proposed highway.[87]

Still another method is used in Oklahoma for levying special assessments. The state commissioner of highways appoints three persons as a board of assessors for road districts in that state; and the members of this board must be owners of real property within the county. The board assesses the benefits to be received by land within the district by reason of the improvement.[88]

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[84] *Va. Code*, 1924, sec. 1752.

[85] *N. C. Code*, 1927, secs. 5317-5329. A similar plan of special assessments is used for agricultural development districts in that state. *Ibid.*, secs. 4959-4984.

[86] *Ann. Code Tenn.*, Supp. 1926, secs. 1682 a 55; 1682 a 82.

[87] A part of the cost is paid by the state.

[88] *Comp. Okla. Stat.*, 1926 Supp., secs. 10230-9 ff. For other cases of the use of special districts see: *Supp. to Comp. Laws N. D.*, 1913-1925, sec. 8247a16; *Remington's Comp. Stat. Wash.*, 1922, vol. 2, sec. 7436; *Comp. Laws Utah*, 1917, vol. 1, sec. 2055; *N. C. Code*, 1927, secs. 3682 ff.; *Wis. Stat.*, 1927, vol.

While the work of special districts is usually financed entirely by the districts, a part of the cost is sometimes borne by the county or the state. In Montana, the petitioners for a local improvement district for the construction of highways, in their petition to the board of county commissioners asking for the creation of such a district, must state the proportional share of the costs and expenses of the work of improvement that the district will agree to assume and pay. The amount assumed by the district must be not less than 35 per cent and may be as much as 75 per cent of the total cost.[89] And in special highway districts in Wisconsin, one-third of the cost of construction is paid by the state.[90]

REVENUES OF SPECIAL DISTRICTS, 1922,* IN THOUSANDS OF DOLLARS

	Road districts	*Drainage districts*	*Irrigation districts*	*Levee districts*	*Other districts*
Gen. prop. tax levied...	$29,472	$ 6,133	$9,942	$5,805	$28,026
Taxes, etc., collected:					
Gen. prop. tax.......	27,689	5,620	3,497	5,251	26,911
Special taxes				228	22
Poll taxes	740				7
Licenses and permits..	253			88	3
Special assessments ..	2,346	13,402	2,898	735	5,817
Totals.............	31,028	19,022	6,395	6,302	32,760
Taxes, etc., Collected, 1922, by States					
Pennsylvania					3,313
Ohio					3,434
Illinois	954	1,288			19,390
Iowa		7,405			
Missouri	685	1,667		35	
Nebraska	376	439	630		501
North Carolina	1,211	15			10
Florida	1,722	1,167			152
Mississippi	6,677	1,381		2,089	

* *Census Reports on Wealth, Debt and Taxation,* 1922: *Assessed Valuation and Tax Levies,* p. 150; *Taxes Collected,* pp. 142-145.

1, ch. 89; *Wyo. Comp. Stat.,* 1920, secs. 1038 ff.; *Ore. Laws,* 1920, vol. 2, sec. 7259.

[89] *Rev. Codes Mont.,* 1921, vol. 1, sec. 1684.

[90] *Wis. Stat.,* 1927, vol. 1, sec. 80.61.

	Road districts	*Drainage districts*	*Irrigation districts*	*Levee districts*	*Other districts*
Arkansas	$ 2,329	$ 1,164		$ 312	$ 536
Louisiana	2,500	992		3,037	37
Texas	5,710	539	$ 20	366	818
Colorado		84	2,435		
Idaho	939	104	895		1
Montana	44	10	261		
Utah		165	110		10
California	3,547	1,162	27	288	886
Oregon	793	242	852		1,195
Washington	3,541	165	918	215	1,620
SPECIAL DISTRICT DEBT, 1922,* IN THOUSANDS OF DOLLARS					
Funded or fixed debt	138,033	38,316	75,636	26,374	114,409
Special assmt. loans	48,300	68,304	24,251	9,583	83,409
All other	1,342	4,673	3,143	874	2,809
Totals	187,675	111,293	103,030	36,831	200,627
Funded or fixed debt less sinking fund assets	136,974	37,427	75,126	26,140	110,400
Gross Debt by States					
Ohio					33,851
Illinois	295	2,445			55,084
Iowa		19,117			
Missouri	1,488	21,480		1,846	
Nebraska	66	1,529	665		12,073
North Carolina	5,222	76			275
Florida	6,473	9,677			
Mississippi	44,411	12,425		7,535	
Arkansas	48,441	15,057		7,830	5,322
Louisiana	9,606	4,658		10,551	250
Texas	56,788	4,698	525	6,602	12,735
Colorado		1,227	14,098		
Idaho	10,138	1,028	6,713		
Montana	16	110	3,095		
Utah		3,564	1,116		750
California	2,330	1,707	58,710	1,326	37,454
Oregon		1,191	7,087		8,560
Washington	5,401	677	4,883	1,141	17,272

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* *U. S. Census Reports on Wealth, Debt and Taxation*, 1922: *Public Debt*, pp. 180-183.

CHAPTER XXIII

VILLAGES, BOROUGHS, AND TOWNS

Scattered throughout the United States are more than 12,000 small municipal corporations, called variously villages, boroughs, and incorporated towns, and in some states included in the title cities. Thus in 1920 there were 12,905 incorporated places of less than 2,500 population, with a total population of 8,969,241.[1]

These figures do not include the unincorporated places which in some states outnumber the incorporated places. The number of unincorporated places having a population of 250 to 2,500 has been estimated at 8,142 with an aggregate population of 4,348,862. Thus the total number of places in the United States, both incorporated and unincorporated, having a population of between 250 and 2,500 has been estimated at 18,381, with an aggregate population of 12,858,521.[2]

It is only with the more compactly built districts which are specially organized for certain purposes of local government that we are interested in this discussion. In establishing a governmental organization to deal with the special needs of these small urban communities, there is a tendency for them to assume functions formerly entrusted to the township and the county. Thus as the number of such semi-urban districts which incorporate and provide their own governmental organization increases, the township and the county decrease in importance as units of local government.

A recent study has pointed out that, contrary to popular belief, the population of these small urban communities is increasing. From 1900 to 1920 the population of American villages (*i.e.*, small urban communities of 250 to 2,500 population) increased in population more rapidly than the nation as a whole. While the increase in such populations was less rapid in the period 1910 to 1920, the rate of increase was much greater than that of the rest of the rural population. As shown by the following table, while the percentage of our total population residing in rural territory has shown a gradual and marked decrease at each census since 1890, that part of our rural population residing in incorporated places of less than 2,500 has shown an increase.

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[1] *Fourteenth Census of the United States*, 1920, vol. 1, p. 50.

[2] C. L. Fry, *American Villagers*, p. 26.

DISTRIBUTION OF POPULATION IN RURAL TERRITORY, 1890-1920

	Incorporated Places Less than 2500		*Rural Territory Not Incorporated*	*All Rural Territory*
	No. of Places	*Population*	*Population*	*Population*
1920	12,905	8,969,241	42,436,776	51,406,017
1910	11,832	8,169,149	41,636,997	49,806,146
1900	8,930	6,301,533	39,312,609	45,614,142
1890	6,490	4,757,974	35,891,381	40,649,355
Per cent of total pop.: 1920		8.5	40.1	48.6
1910		8.9	45.3	54.2
1900		8.3	51.7	60.0
1890		7.6	57.0	64.6

In many states the New York title of villages has been given to these small municipalities. In Connecticut, New Jersey, and Pennsylvania the less populous urban municipalities are called boroughs. In a number of states they are known as towns or incorporated towns.[4] In some states the minimum population for the incorporation of cities is so low that many of the small cities should more properly be classed as villages. In Kansas, all municipal corporations are called cities. ''Towns'' and ''villages'' in that state refer to places laid out in lots and blocks other than incorporated places.[5] In Iowa, municipal corporations having a population of less than two thousand are called towns while town sites which are platted and unincorporated are known as villages.[6]

LEGAL STATUS OF VILLAGES AND TOWNS

Such small urban centers are usually known popularly, and also referred to in the statutes, as villages and towns. The Supreme Court of Nebraska has stated that ''a village is a municipal corporation, although of the lowest grade, . . .''[7] The Supreme Court of New York has pointed out, however, that ''while a village is a municipal corporation, it differs materially from a municipal corporation like a city, because it is only a small collection of houses in the country, and is a subordinate branch of the civil government.''[8] The Supreme Court of Maine has held that villages, ''being intended as agencies in the administration of civil government, they are regarded as public, and partaking the nature of municipal corporations in their incidents.''[9] In New Jersey, it has been held that ''the village incorporation is of the lowest grade, conferring most limited powers. It ranks below the borough or the town, but within its range its incorporated powers are as amply protected as those of a city.''[10] In Minnesota, ''A 'village' means an assemblage of houses, less than a town or city, but nevertheless urban or semi-urban in its character; . . .''[11] In Illinois and Iowa, it has been held that a small assemblage of houses whether situated upon a platted district with regularly laid out streets and alleys or not constitutes a village.[12]

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[4] Indiana, Iowa, Delaware, Virginia, Georgia, Alabama, Colorado, Wyoming, and generally in the Southern and Western States.

[5] *Rev. Stat. Kas.*, 1923, sec. 79, 102.

[6] *Code of Ia.*, 1927, sec. 5623.

[7] *City of Wahoo v. Reeder*, 43 N.W. (Neb.) 1145 (1889).

The word town as used in the statutes also has various meanings. The Supreme Court of California has held that in that state the term ''implies and signifies an aggregation of inhabitants, and a collection of occupied dwellings and other buildings.''[13] The word is sometimes used in its popular sense and in other cases as a legal term. Thus it ''is used to designate a place where there are a number of adjacent occupied dwellings, or as a municipal corporation organized under various statutes of different states, . . .''[14] The word ''town'' is generic and has been held to include a city.[15]

While a distinction is often made between towns and villages, the Supreme Court of Idaho has pointed out, that they are often used in the statutes ''indiscriminately, and apparently without any purpose to make a distinction between the words.''[16] Where a distinction is made, the town is usually higher in the corporate scale

[8] *In re Eiss,* 199 N. Y. S. 544 (1923).

[9] *Camden v. Camden Village Corporation,* 1 Atl. (Me.) 689 (1885).

[10] *State v. Van Valen,* 27 Atl. (N. J.) 1070 (1893).

[11] *State v. Village of Minnetonka,* 59 N. W. (Minn.) 972 (1894).

[12] *I. C. R. R. Co. v. Williams,* 27 Ill. 49 (1861); *State v. Booth,* 149 N.W. (Ia.) 244 (1914).

[13] *Siskiyou Lumber and Mercantile Co. v. Rostel,* 53 Pac. (Calif.) 1118 (1914).

[14] *Klauber v. Higgins,* 49 Pac. (Calif.) 466 (1897).

[15] *State v. Craig,* 31 N.E. (Ind.) 352 (1892); *Odegard v. City of Albert Lea,* 23 N.W. (Minn.) 526 (1885); *County Court of Garfield County v. Schwarz,* 22 Pac. (Colo.) 783 (1889); *Peck v. Weddell,* 17 Ohio St. 271 (1867).

[16] *Brown v. Village of Grangeville,* 71 Pac. (Idahc) 151 (1903).

than the village. The word village is often used in the statutes in its "ordinary and popular sense to describe a community which has no separate existence recognized by law."[17]

ORGANIZATION OF VILLAGES AND TOWNS

During the colonial period a number of boroughs were established in Pennsylvania and New Jersey, modeled after the boroughs in England. After the Revolution the name city came to be applied to urban municipal corporations of some size, but small communities in these two states continued to be called boroughs, and new corporations with this title were established from time to time. In 1794 the legislature of New York incorporated the village of Waterford, in 1798 the three villages of Troy, Lansingburgh and Utica, and others in subsequent years. In 1800 the borough of Bridgeport was organized in Connecticut; and a few other boroughs were later established in that state.[18]

For a time such villages and boroughs were incorporated by special acts of the state legislatures, in the same manner as cities after the Revolution. But in 1834, when there were 137 boroughs in Pennsylvania, a general law providing for the organization of boroughs was enacted. And in 1847 a general law was passed for the incorporation of villages in New York.

From these neighboring states the organization of small semi-urban corporations has extended to the South and West. Throughout the Central states they have modified to a considerable extent the importance of township government, and in the South and far West they are important factors in explaining the absence of the organized townships. In New England a few villages have been organized in Maine and Vermont, as well as boroughs in Connecticut.[19]

Nearly every state now has a general law for the organization of villages, boroughs or incorporated towns. But special acts are frequently passed establishing such corporations, and still more frequently amending the system of government for certain places. And in Connecticut all boroughs are incorporated by special act. It is impossible to consider all of the variations caused by this method of legislation and only the more general provisions will be noted.

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[17] Eugene McQuillin, *Municipal Corporations,* vol. 1, sec. 132.

[18] Henry Loomis Nelson, "Town and Village Government," 83 *Harper's Magazine* 111 (1891).

[19] See F. G. Bates, "Village Government in New England," 6 *Amer. Pol. Sci. Rev.* 367 (1912).

Usually the procedure for incorporation requires a petition from the inhabitants of the proposed village or town and a popular vote on the proposition. Sometimes the petition is presented to the judge of the principal local court, as the circuit court in Wisconsin, Kentucky, Virginia, and West Virginia; the district court in Iowa; the quarter-sessions court of the county in Georgia.[20] In Illinois, Texas, and Colorado the petition is presented to the county court; and in Alabama to the probate judge.[21] In some cases the petition goes to the county board, as in Indiana, Minnesota, Missouri, North Dakota, South Dakota, Nebraska, Oklahoma, Arizona, New Mexico, Utah, Idaho, Oregon, and Washington.[22]

In New York, the petition is presented to the town supervisor, or supervisors if the proposed district includes parts of more than one town. Villages may be organized in Ohio by petition to the township trustee and a popular vote, or by petition to the county commissioners without a popular vote.[23]

The number of signers of a petition for the incorporation of a town or village varies. It must be signed by five tax payers and residents in Wisconsin; any fifteen legal voters in Illinois; by twenty resident qualified voters in Virginia, Arkansas, and Texas; by twenty-five qualified voters in Iowa, Minnesota, and Alabama; by twenty-five adult freeholders in New York; by thirty electors in Ohio; by sixty qualified voters in Washington; by one-third of the qualified voters in North and South Dakota; in Indiana this one-third of the qualified voters must also represent one-third of the whole number of real estate owners. Among the states with the most difficult provisions for petitions for the incorporation of towns and villages are Nebraska and Idaho, where the petition must be signed by a majority of the taxable inhabitants, and Kentucky and Arizona where it must be signed by two-thirds of the voters residing within the proposed corporation.

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[20] *Wis. Stat.*, 1923, vol. 1, ch. 61; *Carroll's Ky. Stat.*, 1922, sec. 3714; *Va. Code*, 1924, secs. 2886 ff.; *Barnes W. Va. Code*, 1923, p. 938; *Code of Iowa.*, 1927, ch. 286; *Pa. Stat. Complete to 1920*, sec. 4125; *Ga. Code.* 1926, secs. 855 (9) ff.

[21] *Vernon's Ann. Texas Stat.*, vol. 2, arts. 1133 ff.; *Ala. Code*, 1928, secs. 1744 ff.; *Cahill's Ill. Rev. Stat.*, 1929, ch. 24, sec. 257; *Comp. Laws Colo.*, 1921, sec. 8979.

[22] *Burns' Ind. Stat.*, 1926, vol. 3, secs. 247 ff.; *Masons Minn. Stat.*, 1927, vol. 1, sec. 1111; *Rev. Stat. Mo.*, 1919, vol. 2, sec. 7615; *Comp. Laws N. D.*, 1913, vol. 1, sec. 3843; *S. D. Rev. Code*, 1919, vol. 2, secs. 6169 ff.; *Comp. Stat. Neb.*, 1922, secs. 4223 ff.; *Comp. Okla. Stat.*, 1921, vol. 2, secs. 4745 ff.; *Rev. Stat. Ariz.*, 1913, p. 628; *N. M. Stat.*, 1915, secs. 3531 ff.; *Comp. Laws Utah*, 1917, sec. 783; *Idaho Comp. Stat.*, 1919, vol. 1, sec. 3900; *Ore. Laws*, 1920, vol. 2, secs. 3688 ff.; *Remingtons Comp. Stat. Wash.*, 1922, vol. 3, secs. 8884 ff.

[23] *McKinney's Consol. Laws of N. Y.*, Book 63; *Page's Ohio Code*, vol. 1, secs. 3518 ff. For the method of incorporating villages in Connecticut, New Hampshire and Vermont, see F. G. Bates, *op. cit.*

It is usually provided that the authority to which the petition is presented must order an election within the proposed town or village to determine whether it shall be formed. In Ohio, Missouri, Nebraska, Arkansas, Arizona, Idaho, and Utah such corporations are established without a formal vote of the electors of the district. In Virginia, the circuit court may, upon petition by twenty voters, create towns if it finds that "it is to the best interests of the inhabitants of that locality, that the general good of the community will be promoted by the incorporation of said town." If the court is in doubt it may require a petition by a majority of the qualified electors. In Kentucky, where a petition by two-thirds of the voters in the proposed town is required, no provision is made for a popular vote, the corporation being established by the circuit court.

The Supreme Court of Washington has held that an act authorizing the judge of the district court to incorporate towns and villages upon petition of a majority of the inhabitants was unconstitutional as a delegation of legislative functions to a judicial court.[24]

Frequently the statutes require a minimum population for new villages. In Illinois, Minnesota, North Dakota, Alabama, and Virginia only one hundred inhabitants are required; in Kentucky, 125; and in Oregon, 150. More generally the number is from two hundred as in New York, Vermont, Virginia, Texas, and Idaho, to three hundred as in Michigan, Utah, and Washington. In Arizona it is placed at five hundred.

Sometimes it is provided that the required population must be within a specified area. In New York, it must not exceed one square mile; in Illinois, two square miles; and in North Dakota, four square miles. In Kentucky, boundaries may not exceed one-fourth mile in each direction; in New Mexico, villages must be not less than one square mile nor more than three, and towns may not exceed over one and one-half miles in length or breadth. The area in Wisconsin varies with the population.

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[24] *Territory v. Stewart,* 23 Pac. (Wash.) 405 (1890).

The area within a proposed town in Virginia must not be "excessive." In West Virginia, villages may be incorporated by the circuit court if they have not less than one hundred people and the territory includes not less than one-fourth square mile and not more than a "reasonable amount of territory proportionate to residents therein." In Alabama, the proposed municipal corporation must not only have one hundred people but must constitute "a body of citizens whose residences are contiguous to and all of which form a homogeneous settlement or community."

In Minnesota, in addition to the population requirements of not less than one hundred nor more than three thousand, there is a provision that the area must be "so conditioned as properly to be subjected to village government." The election of officers and the entire proceedings for the incorporation of a village was declared unconstitutional by the supreme court of the state, where the area consisted almost exclusively of agricultural land, containing "no nucleus of population, nor even a defined center of permanent habitation." It was held to be "so obviously and wholly otherwise than urban in character that it has no adaptability for village purposes and is not so conditioned as to be subjected to village government."[25]

In New York, Pennsylvania, and Texas, the minimum population for cities is 10,000; and all municipal corporations below that figure are villages and boroughs. Often, however, a village or borough increases in population a good deal beyond this limit before the change is made to a city. In other states the minimum population for a city is much lower. In Ohio, Virginia, and Louisiana, it is 5,000, and that is about the usual minimum for cities in the three New England states where villages are established. In Missouri and Minnesota the minimum is 3,000; in Arkansas, 2,500; in Alabama and a number of other states, 2,000; in Washington, 1,500; and in Illinois, Nebraska and Montana, 1,000.[26]

A comparison of the number of people living in towns, villages and boroughs in different sections of the United States on the basis of legal definitions would not indicate with any exactness the relative extent to which small urban districts are incorporated. For this purpose it is better to ignore the technical titles of the districts with varying population limits and to consider all municipal corporations of whatever name within uniform limits. The following table shows the number of people living in incorporated places of less than 2,500 population in the various geographical divisions.

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[25] *State v. So-called "Village of Minnewashta,"* 206 N.W. (Minn.) 455 (1925).

[26] The village of Oak Park, Ill., has over 40,000 population; and there are a number of other villages in that state with more than 5,000 population.

URBAN AND RURAL POPULATION, BY DIVISIONS, 1920 [27]

			Rural population			
	Total population	*Urban population*	*Total*	*In inc. places*	*In uninc. territory*	*Per cent **
United States	105,710,620	54,304,603	51,406,017	8,969,241	42,436,776	17.4
New England	7,400,909	5,865,073	1,535,836	83,355	1,452,481	5.4
Mid. Atlantic	22,261,144	16,672,595	5,588,549	1,075,503	4,513,046	21.03
E.No. Central	21,475,543	13,049,272	8,426,271	2,007,078	6,419,193	23.8
W.No.Central	12,544,249	4,727,372	7,816,877	2,074,005	5,742,872	26.9
So. Atlantic	13,990,272	4,338,792	9,651,480	1,175,449	8,746,031	12.1
E.So. Central	8,893,307	1,994,207	6,899,100	693,195	6,205,905	10.04
W.So. Central	10,242,224	2,970,829	7,271,395	980,585	6,290,810	13.4
Mountain	3,336,101	1,214,980	2,121,121	477,245	1,643,876	22.4
Pacific	5,566,871	3,471,483	2,095,388	402,826	1,692,562	14.4

* Of rural population in incorporated places.

The most striking fact disclosed by this table is the small population living in incorporated places of less than 2,500 population in the New England states. This is not due to the absence of small compact settlements, but to the development of town governments, which serve the needs of the villages as well as the rural sections of the towns. Thus while there were 1,132 villages in the New England states in 1920, only 78, or 7 per cent, were incorporated.[28] At that time there were no incorporated villages of less than 2,500 population in Massachusetts and Rhode Island and only two in New Hampshire.

In the Southern states the number of incorporated villages and their aggregate population is less in proportion to the total rural population than in the Central states. This has been accounted for by the more scattered population, the comparative poverty of that area, and the prevalence of the plantation system. The poverty of the area meant a low purchasing power of the people in the rural areas and they were not able to maintain and support villages. Under the large scale plantation system, most of the necessities were provided by the owner, and villages did not develop.

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[27] *Fourteenth Census of the United States*, 1920, vol. 1, p. 46. "The Census Bureau classifies as urban population that residing in cities and other incorporated places having 2,500 inhabitants or more, and in towns of that size in Massachusetts, New Hampshire and Rhode Island." Since thickly populated sections in these three states do not incorporate, the Census Bureau assumes that those towns of over 2,500 population are largely urban.

[28] C. L. Fry, *op. cit.*, p. 32. In the West North Central States, however, 89 per cent of all villages were incorporated.

With the changed conditions in the South, however, there has been an increase in villages in that section. Owing to the absence of any general system of township government there has been a tendency for smaller places to become incorporated in the South than elsewhere. The proportion of village population in the Pacific coast states is smaller than in the Mountain and Central states.

The development of village corporations goes hand in hand with the decline of township government. Common causes affect both movements, while by the mutual interplay of forces the rise of one institution means the weakening of the other. The limited powers of the township in the Central states and the absence of this institution in the South and West has made necessary some organ of local administration to meet the common needs of compact settlements. The larger needs of the village districts as compared with the rural regions, and the opposing interest of those living in different sections have promoted the demand for a special village organization even where the township system is established. Owing to the artificial nature of the township in the Middle West, villages have developed which cross township lines; and a single organization for the whole village in such cases can accomplish more than two or more township authorities who might often have conflicting purposes.

Again the decline of the town meeting in the Central states has been both cause and effect of village incorporation. On the one hand it has left no adequate authority to deal with village problems. On the other hand, the separate organization of the villages has lessened the activity of and interest in the popular assembly. Another factor in developing village incorporation has been the general tendency towards greater specialization and more minute division of labor. In some cases the desire to establish more public offices has doubtless promoted the creation of separate institutions.

The functions and importance of town, village and borough government vary considerably in the different sections of the country. They are relatively least in the New England states, where the village supplements an already active town government.

Special local needs for compact populations here comprise their whole activity. Fire protection, police, street pavements and side walks, sewers, water works, and street lighting are the main purposes of village organization. In those Central states where the villages remain part of the township, as in New York, Ohio, Indiana, Michigan, Illinois, Iowa, Kansas, and in those parts of Missouri and Nebraska where the township system is established, the general purposes of village government are the same as in New England. But in practice the townships are less important and the villages relatively more important, and in some cases they have taken over some township functions.

In the other Central states the villages and towns are usually independent of the townships, as in Pennsylvania, New Jersey, Wisconsin, Minnesota and the Dakotas. In these cases the village government adds the usual township functions to those of the villages in the states previously noted. Throughout the South and West, although villages are generally included within the county districts, the latter are so unimportant that the village government deals with most of the local problems except those performed through the county officials.

THE GOVERNMENT OF VILLAGES AND TOWNS

Village and town organization is relatively simple. The principal authority is a board, usually consisting of five to seven members elected at large. In some cases, however, the number may be as small as three, as in Connecticut, Virginia, New York and Wisconsin.[29] In some cases there may be as many members as nine, as in North Dakota, and in Missouri if the town has over 2,500 inhabitants. The members of the council are known as trustees in New York and generally in the Middle West; as members of the council in Pennsylvania, New Jersey, Ohio, Iowa, Kansas, and generally in the South; as burgesses in Connecticut; as commissioners in Maryland; and as aldermen in Texas and Oregon.[30]

Members of village and town boards are usually elected at large. In some cases, as in New Jersey, Montana, and North Dakota, they are elected from wards. In Indiana, trustees must be elected from wards but they are voted on by all the electors of the town. The term of members of village and town boards is usually one or two years, in the latter case one half of the number being elected every year.

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[29] In villages in New York of the third and fourth class, the village board may fix the sixe at three; and in Wisconsin there is a president and two trustees if the population of the village is 350 or less.

[30] Though usually known as trustees in Vermont, in a few cases they are called bailiffs.

POWERS OF VILLAGES AND TOWNS

Village and town councils have power to pass ordinances on many subjects enumerated in detail in the statutes. These include ordinances affecting the general public, and ordinances regulating village officers and their duties. They are bodies of limited jurisdiction and may do only the things that have been expressly authorized. In Montana they have 84 enumerated powers; in South Dakota, 83; in New York, 62; in Wisconsin, 38, and seven additional if the village is in a county of over 250,000 population; in Michigan, 27; in Minnesota, 22; in Indiana, 21; and in Oklahoma, 19. In Illinois, villages have the same general powers as cities.

The Wisconsin law may be taken as illustrative of the powers conferred upon village boards. Village boards in that state may establish a fire department; designate fire limits and regulate the construction of buildings within such limits; lay out and open streets and sewers; build and keep sidewalks in repair; restrain the running at large of horses, cattle, etc.; prohibit or license circuses and theatrical performances; prohibit all kinds of gambling, disorderly conduct, and lewdness; appoint policemen; maintain waterworks; and provide parks, libraries, and community centers.[31]

Financial authority is required to make these powers effective. Village and town councils regularly have a limited power of taxation; and they generally may authorize special assessments for street improvements. The power to issue bonds for permanent improvements is often less than for cities, but many of the larger villages have such power by special legislation. In New York, any village may issue a loan for furnishing a water supply to the extent of ten per cent of the assessed valuation.[32] In Michigan, by a two-thirds popular vote they may borrow up to five per cent of the assessed valuation for water works and to the same extent for lighting plant.[33] In Ohio, all villages have the same power as cities to issue bonds for a long list of specified purposes. Village councils in that state may borrow not over one per cent of the assessed valuation in one year and not over four per cent altogether; while additional loans may be made with the approval of the voters.[34]

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[31] *Wis. Stat.*, 1923, vol. 1, sec. 61.34.

[32] *McKinney's Consol. Laws of N. Y.*, Book 63.

[33] *Comp. Laws. Mich.*, 1915, vol. 1, sec. 2840.

Everywhere the village councils control the appropriation and expenditure of village funds. The councils make contracts, and audit claims and accounts against their villages. In general they control the village finances and property.

In most states the village councils have more effective control over the executive officers than the councils in large cities. Often some of these officers are established by statute and elected; but generally the councils have some power to establish offices and to make appointments; and in some states, especially in the South, they appoint most of the village officers. Sometimes the councils have power to remove officers for misconduct. In New York, they have this power over officers whom they appoint; in Ohio they have the same power over both elective and appointive officers. In any case, the councils can limit the activity of the village officers by their control over appropriations.

Every village has a chief officer, generally called a mayor, as in Pennsylvania, New Jersey, Ohio, Iowa, Virginia, West Virginia, Georgia and Texas, or a president, as in New York, Vermont, Michigan, Illinois, Wisconsin, and Minnesota. In Missouri, where he is selected by the village board, he is known as the chairman of the board of trustees.[35] They are usually elected by popular vote, but in some cases, as Indiana, the president is selected by the board. Their legal powers have not been of much importance; but in some states there is now a tendency to invest them with the special authority of mayors in large cities. They preside over the meetings of the council. But in Michigan, Ohio, and Illinois, they have only a casting vote in case of a tie. In a few states they have a limited veto over the acts of the council. They are generally considered as the chief executive officers of the towns and villages, with a limited supervision over other officers, and a more definite responsibility for the enforcement of local police ordinances. Frequently they can appoint policemen; and in Michigan and Ohio they have a somewhat larger power of appointment of minor officials. In some of the Southern states the mayors of incorporated towns and villages act as local police justices.

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[34] *Page's Ohio Code,* vol. 1, title XII, ch. 6.

[35] In Connecticut the head officer of a borough is called the warden, and in Alabama the chief village officer is styled the intendant.

A considerable number of villages have adopted the manager form of government, and others have appointed village managers without special authority in the statutes. In March, 1929, the manager plan was reported to be in operation in sixty-four villages of less than 2,500 population, eleven of these having less than 1,000 population.[36] Manager villages were most numerous in Florida (11), Kansas (8), Michigan and Oklahoma (each 6), and California and Virginia (each 4). There were two such villages reported in Iowa, Minnesota, Ohio, Oregon, Pennsylvania, Texas. and West Virginia; and one in Georgia, Illinois, Maine, Montana, New Jersey, New Mexico, New York, North Carolina, South Dakota, Tennessee, and Vermont.

Other village officers may be briefly noted. Every village has a clerk or recorder and a treasurer or collector. There is always a head police officer, sometimes called constable, sometimes by the more dignified title of marshal, and occasionally sergeant or bailiff. Nearly every village has a street commissioner. Other statutory officers are sometimes provided for in the general law, as attorneys or solicitors, assessors, and overseers of the poor. These statutory officers are usually elective in the states of the Middle-west and some of them are elective in other states. But in other sections of the country they are more generally appointive.

Sometimes each village or town has a justice of the peace; in other states the township or district justices act within the villages. Very often villages are established as school districts, with the usual elected school officers. In larger villages and towns still other officers are provided, often being authorized by special legislation.

Most villages are primarily local trading centers of rural agricultural communities; but there are some distinctive types, such as mining villages, and industrial and residence suburbs in the neighborhood of larger cities. In many mining villages and some industrial villages a single corporation may own all the real property, and through its control over this and its officers and employees may exercise a dominating influence in governmental and other local affairs.[37]

Towns, villages and boroughs have an important place in a study of rural government. The 12,000 incorporated places of less than 2,500 population have a marked significance relative to the other units of local government, namely the township and the county. Recent studies indicate that these small incorporated places are occupying a more important position in our rural population. With an increased tendency towards incorporation of such communities, the town, the village, and the borough will become even more significant in a study of rural government. They tend to assume functions formerly entrusted to the township and the county.

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[36] *Public Management,* March, 1929.

[37] J. A. Fairlie, *Local Government in Counties, Towns and Villages,* p. 211.

CHAPTER XXIV

COUNTY GOVERNMENT AND METROPOLITAN AREAS

One of the problems which arises in a study of county government is that of the relation of large cities with the counties in which they lie. With city and county governments operating over the same area, there is a duplication of functions resulting in unnecessary governmental expenditures, and opening the way to conflict of authority in the exercise of powers. This duplication of effort and conflict of authority may be noted in law enforcement and in finance, health and poor relief administration. In many cases lack of coöperation, if not direct conflict, has arisen between county and city law enforcement.

One method by which an attempt has been made to meet this situation has been by establishing a combined city and county government for the same area. The boundaries of the city may be extended to make them coterminous with those of the county, or the city may be separated from the county in which it has been located. Both methods have been used in the United States; and both are usually referred to as city-county consolidation, though the latter may be more correctly defined as city-county separation. Under both methods there has been some simplification of governmental machinery; but the consolidation of city and county governments has been by no means complete.

Moreover, even where partial consolidation has been brought about, other difficulties have arisen with the development of large urban communities beyond county boundaries and sometimes state boundaries; and in recent years the larger problem of local governmental organization for large metropolitan regions has begun to receive attention.

Some indication of the scope and importance of these problems may be given by the following table, showing the population at the last census, of the larger cities in the United States, the population of the counties, and of the metropolitan districts and adjacent territory.

POPULATION OF METROPOLITAN DISTRICTS, 1920

	City	*County*	*Metropolitan district*	*Including adj. ter.*
New York City	5,620,048	5,620,048	7,910,415	8,034,349
Jersey City	298,103	629,154		
Newark	414,524	652,089		
Paterson	135,875	259,174		
Yonkers	100,176	344,436		
Chicago	2,710,705	3,053,017	3,178,924	3,201,301
Philadelphia	1,823,779	1,823,779	2,407,234	2,428,728
Camden, N. J.	116,309	190,508		
Boston	748,000	835,522	1,772,254	1,801,320
Detroit	993,678	1,177,645	1,165,153	1,181,057
Pittsburgh	588,343	1,185,808	1,207,504	1,216,464
St. Louis	772,897	772,897	952,012	1,014,457
St. Louis County		100,737		
Cleveland	796,841	943,495	925,720	951,579
San Francisco	506,676	506,676	891,008	900,921
Oakland	216,261	344,177		
Los Angeles	576,673	936,455	879,008	880,653
Baltimore	733,826	733,826	787,458	814,395
Minneapolis	380,582	415,419	629,216	679,864
St. Paul	234,698	244,544		
Cincinnati	401,247	493,678	606,850	681,287
Buffalo	506,775	634,688	602,847	623,865
Milwaukee	457,147	539,449	537,737	546,822
Washington, D. C.	437,571	437,571	500,588	540,708
Providence	237,595	475,190	444,228	551,502
Kansas City, Mo.	324,410	367,846	477,354	502,242
Kansas City, Kas.	101,177	122,218		
New Orleans	387,219	387,219	397,915	419,679
Seattle	315,312	389,273	357,950	383,324
Springfield, Mass.	129,614	300,305		382,762
Albany, N. Y.	113,344	186,106		382,959
Indianapolis	314,194	348,061	339,105	367,347
Louisville	234,891	286,369	318,159	340,985
Rochester, N. Y.	295,750	352,034	320,966	342,099
Portland, Ore.	258,288	275,898	299,882	329,246
Akron	208,435	286,065	285,113	305,696
Toledo	243,104	275,721	263,717	294,248
Denver	256,491	256,491	264,232	289,465
Columbus	237,031	283,951	260,336	284,841
Atlanta	200,616	232,206	249,226	279,235
Scranton	137,783	286,311		347,793
Fall River	129,485	359,005		333,130
New Bedford	121,217			

Lowell	112,759	778,352	313,206
Norfolk, Va.	115,777		303,278
Portsmouth, Va.	111,445		
Hartford	138,036	336,027	300,423
Birmingham	178,306	310,054	290,066
Youngstown	132,358	186,310	287,387
Worcester	179,754	455,135	268,551
New Haven	162,537	415,214	264,829
Omaha	191,379	204,524	249,999

CITY-COUNTY CONSOLIDATION

The largest progress towards city county consolidation has been made in the cases of Baltimore, Philadelphia, San Francisco, St. Louis, and Denver. Consolidation has also been effected to some degree in the case of New York and Boston.

Baltimore city was separated from Baltimore county in 1851.[1] The city has been given the legal status of a county by the state constitution, though it is not officially so named. In the election of members of the legislature and of public officers such as sheriff and state's attorney it is treated as a county. The city government performs the functions of both a city and a county.[2]

A consolidation act was passed for Philadelphia in 1854.[3] This extended the limits of the city of Philadelphia so as to make them coterminous with the county of Philadelphia. The units of local government within the county were consolidated with the city government. These included nine incorporated districts, six boroughs, and thirteen townships. While there has been some consolidation of city and county governments, this has not been carried very far and they remain in large part independent. The county commissioners, treasurer and auditors have been discontinued and their functions transferred to city authorities. Among the county authorities which have been retained are the judges, register of wills, recorder of deeds, clerk of quarter sessions, district attorney, and coroner,—all of whom are elective officers. City-county consolidation in Philadelphia has not proved entirely satisfactory, owing to the maintenance of separate and independent governments for the city and the county.[4]

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[1] See *Ill. Const. Conv. Bull.*, 1920, pp. 962-63; *Cyclopedia of American Government*, vol. 1, p. 105.

[2] The statutes of Maryland provide that the word *county* be construed to include the city of Baltimore unless such construction would be unreasonable. *Ann. Code of Md.*, vol. 1, art. 1, sec. 14. For application of this section see *Frederick County v. Frederick City,* 42 Atl. (Md.) 218 (1898); *Chappell v. Lacy,* 26 Atl. (Md.) 499 (1893).

[3] *Ill. Const. Conv. Bull.*, 1920, pp. 961-962.

The governments of the city and county of San Francisco were consolidated by act of 1856. The plan has been modified since that time, the intent being further to simplify and centralize the governmental organization. The city and county are now co-extensive in area, with a single government provided for them. The board of supervisors which serves as county board and city council has eighteen members elected at large for four year terms. The members of the board receive a salary of $2,400 per year. Other officers acting in a dual capacity, and thus avoiding the duplication which would exist without consolidation, are the treasurer, assessor, auditor, and tax collector.[5]

The plan of consolidation in San Francisco does not go as far as seems desirable.[6] There are two law departments for the consolidated government, with an elective district attorney at the head of one and an elective city attorney at the head of the other. Unnecessary duplication also exists in the law enforcement officers, there being both a sheriff and a city police department. The organization provided for the consolidated government has been criticized also because the council participates in administration to too great a degree and administrative responsibility is not placed upon the mayor.[7]

St. Louis, like Baltimore, has been separated from the county of which it was formerly a part. Provision was made in the Missouri constitution of 1875 for city-county separation or consolidation in St. Louis. Acting under this constitutional provision, a home rule charter was adopted in St. Louis in 1876, separating St. Louis from the county in which it was located. Certain county officers were abolished, among them being the county court of seven members, which corresponded to the county board in other states. The city government now performs the functions of both city and county. The plan appears to have secured "a large improvement in respect to city and county matters and more efficient administration.'' The financial results of consolidation seem especially to have been ''highly satisfactory,'' expenses and taxes having been reduced even though better services and improvements were secured.[8]

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[4] See 12 *Nat. Mun. Rev.* 319 (1923).

[5] Percy V. Long, "Consolidated City and County Government in San Francisco," 8 *Proceedings Amer. Pol. Sci. Assoc.* 109-121 (1912); *Ill. Const. Conv. Bull.*, 1920, pp. 968-970.

[6] George C. Sikes, "Consolidation Problems in California," 7 *Nat. Mun. Rev.* 163 (1918).

[7] William H. Nanry, "The San Francisco Board of Supervisors and Consolidated Government," 13 *Nat. Mun. Rev.* 617 (1924).

The amendment of 1876 made no provision for the extension of the boundaries of the city to take in the suburbs which developed. The state law of Missouri provides that no city shall be incorporated within two miles of the limit of any other city or town in the same county. The city of St. Louis is not in St. Louis county, however, so that this provision has not prevented the incorporation of cities and towns just outside the boundaries of the city in St. Louis county. This has complicated the questions of water supply, sewage disposal, transportation facilities, and the preservation of public order in the city of St. Louis and the entire metropolitan area. Efforts to meet this situation by the extension of the municipal boundaries have thus far failed, owing to the opposition of the county.[9]

A constitutional amendment was adopted in Missouri in 1924, which sought to enable St. Louis to extend its boundaries to meet this situation. A commission of eighteen persons, nine from the city of St. Louis and nine from St. Louis county, was established to work out a plan. The commission reported in favor of a plan for merging the county of St. Louis in the city of St. Louis, the two existing units thus to amalgamate and operate under the existing city government. The constitutional amendment required the proposition to be submitted to the voters of the county and city separately and to be accepted in both cases before it could become effective. While the plan was approved by the voters of the city it was defeated by the voters of the county.[10] The experience of St. Louis indicates that in case of the separation of a city from the county of which it was formerly a part, some provision is needed for the later extension of the city boundaries.

New York city and county covered the same area from early colonial days. With the extension of the city in 1898, it included four counties within its limits, and a fifth has since been created by the division of New York county. While the government of the counties has been merged with the city government to some extent, the counties are still used as units for the administration of justice and for the election of officers prescribed by the state constitution. The extent of consolidation in financial administration has been summarized as follows: "In the first place, the work of financial administration has been completely consolidated. Appropriations and tax levies for county purposes are made by the city board of estimate and apportionment and the board of aldermen; and the same city authorities determine the salaries for county officers, so far as they are not fixed by state law. The assessment of county taxes is made by the city department. The city chamberlain acts as treasurer for all the five counties. The city comptroller audits county expenditures."[11]

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[8] *Ill. Const. Conv. Bull.*, 1920, pp. 965-968; Truman P. Young, ''The Scheme of Separation of City and County Government in St. Louis—Its History and Purposes,'' 8 *Proceedings Amer. Pol. Sci. Assoc.* 97 (1912).

[9] Roger N. Baldwin, ''St. Louis' Successful Fight for a Modern Charter,'' 3 *Nat. Mun. Rev.* 720 (1914).

[10] Thomas H. Reed, ed., ''Notes on Municipal Affairs,'' 21 *Amer. Pol. Sci. Rev.* 363-64 (1927); Hugh K. Wagner, ''St. Louis Outgrows Present Boundaries,'' 13 *Nat. Mun. Rev.* 605 (1924); 15 *Nat. Mun. Rev.* 377 (1926); *ibid.*, 731 (1926).

Consolidation has been extended also to other fields. "Supervision of county property and public works, ordinance powers and other auxiliary powers, formerly vested in the boards of supervisors, are now exercised by the board of aldermen. The direct management of county property is exercised by various city departments, under the general administrative control of the mayor. All local charities are in charge of the city departments."[12]

In the administration of justice the counties still act as separate and independent units. Certain county officers, which are provided for by the constitution, are also elected in the counties within the limits of New York City.[13]

The consolidation of city and county functions began in Boston when the town of Boston was organized as a city in 1821-22. The court of session of Suffolk county was abolished at that time and its administrative functions were transferred to the mayor and aldermen of Boston. These functions, which correspond to those of the county board, are still exercised by the mayor and council. Consolidation has been carried further in the field of financial administration than in any other. "The treasurer and the auditor of the city of Boston act as treasurer and auditor for Suffolk county. The ownership and jurisdiction of all county property is vested in the city of Boston; and the entire county expenses, including those of judicial administration, are paid by the city of Boston." City-county consolidation is not complete, however, in the case of Boston and Suffolk county. Seven elective and a number of appointive positions are still found in Suffolk county. The number of paid county officers and employees in the county in 1910 was 586.[14]

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[11] *Ill. Const. Conv. Bull.,* 1920, p. 957.

[12] *Ibid.*

[13] Arthur Ludington, "The Relation of County to City Government in New York City," 8 *Proceedings Amer. Pol. Sci. Assoc.* 73-88 (1912).

The most successful case of city-county separation in this country is probably that of Denver. A constitutional amendment was adopted in Colorado in 1902 providing for the consolidation of city and county governments in that city. The amendment provided that the municipal corporation known as the city of Denver, and all municipal corporations in that part of the county of Arapahoe included within the territorial boundaries of the city of Denver, be consolidated and declared to be a single body politic and corporate by the name of the "City and County of Denver." Provision was made for the further annexation of contiguous territory to the newly created municipal corporation.

Acting under the power thus conferred a consolidated home rule charter was adopted under which duplication of officers and functions was largely eliminated. Only two of the seventeen elective county officers were provided for in the newly created municipal corporation. The work of the county offices which have been abolished has been taken over by officers of the city. The city council has taken over the work of the county commissioners; the office of sheriff has been abolished, the functions formerly entrusted to it now being performed by the police department.

The short ballot principle has been followed in the government of the consolidated area. The mayor, president, and members of the council, county judge, and school commissioners, are the elective officers. Among the appointive officers are the heads of departments, city clerk, city attorney, city engineer, municipal judges, and superintendent of schools. The revenue department of the city and county has replaced the county treasurer and county assessor; the city clerk now acts as county clerk and recorder; the city attorney serves also as county attorney; and the city engineer performs the duties of the county surveyor. Thus it may be seen that Denver has established a system of government which eliminates duplication of effort and governmental organization.[15]

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[14] See *Ill. Const. Conv. Bull.*, 1920, pp. 958-960; O. C. Hormell, "The City and County in Massachusetts," 8 *Proceedings Amer. Pol. Sci. Assoc.* 61-72 (1912); O. C. Hormell, "Boston's County Problems," 47 *Annals Amer. Acad. of Pol. and Soc. Sci.* 134-152 (1913). Attention may also be called to Nantucket County, Mass., which has only a single town of the same name; and in which county and town government are to some extent combined.

A limited degree of city county consolidation is found also in the case of the city of St. Paul and Ramsey county, and in the city of New Orleans and the Parish of Orleans. The mayor of St. Paul is ex officio chairman of the board of county commissioners of Ramsey county. There is a joint city hall and court house commission for the city and county, created by special act of the legislature. It is composed of three members of the city council and three members of the county board, all of whom are appointed by the mayor, who serves as head. It is the duty of this commission to manage the one building in which most of the county and city offices are housed, the cost being divided equally between the city and the county. There is also a joint city and county board of control composed of three members, two of whom are elected by the county commissioners and one by the city council. This board supervises the city hospital, the county home, and city and county outdoor poor relief. Two-thirds of the cost is paid by the county and one-third by the city.

When we consider that in 1920, of the 244,554 people in Ramsey county, 234,698 were in the city of St. Paul, there seems to be need for further unification of governmental organization. Some duplication of offices which it has been suggested might well be eliminated are: county superintendent of schools and city department of education; county physician and city health bureau; county treasurer and city commissioner of finance; county auditor and city comptroller; county attorney and corporation counsel; and county engineer and city engineer.[16]

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[15] *Ill. Const. Conv. Bull.*, 1920, pp. 971-973; C. L. King, *History of the City and County of Denver* (1911); W. B. Guthrie, *The City and County of Denver* (1917); *Constitution of Colorado*, Article XX. In 1905 the Supreme Court of Colorado held that not even by constitutional amendment could the people of the state give to local authorities the power to regulate county offices which were held to be essential state offices. This prevented a consolidation of city and county offices, and for a time a dual set of officers were used. But in 1911 the Supreme Court of the state reversed the earlier decision and held that city and county offices could be consolidated and that it did not abolish county government. *People v. Johnson,* 34 Colo. 143 (1905); *People v. Cassidy,* 50 Colo. 503 (1911).

[16] Arthur E. Nelson, ''Unprofitable County Government, 13 *Nat. Mun. Rev.* 425 (1924).

The parish of Orleans, which lies within the city of New Orleans and is identical with it according to the census reports, does not have certain officers found in other parishes, as the police jury, constables and justices of the peace. The coroner of the parish of Orleans is ex officio city physician of the city of New Orleans. There are found, however, as parish officers, tax collectors, and tax assessors, a recorder of mortgages, both a civil and a criminal sheriff, and a judicial organization.[17]

Constitutional provisions in other states also authorize city county consolidation. The Missouri constitution, in addition to the provisions for the separation of the city of St. Louis from St. Louis county, provides that "in all counties having a city therein containing over one hundred thousand inhabitants, the city and county government thereof may be consolidated in such manner as may be provided by law." [18]

The constitution of Michigan provides that "when any city has attained a population of one hundred thousand inhabitants, the legislature may organize it into a separate county without reference to geographical extent, if a majority of the electors of such city and of the remainder of the county in which such city may be situated voting on the question shall each determine in favor of organizing said city into a separate county." The Minnesota legislature may organize any city into a separate county, when it has attained a population of twenty thousand inhabitants when a majority of the electors of the county vote in favor of separate organization.[19] No action, however, has been taken under any of these provisions in Missouri, Michigan, or Minnesota.

City-county consolidation is also provided for in the California constitution. It is stipulated that cities framing their own charters may make provision for the performance by county officers of certain municipal functions, when the discharge of such functions is authorized by general law or by a county charter framed under the constitution. City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of the constitution applicable to cities and also those applicable to counties, so far as not inconsistent or not prohibited to cities, are applicable to such consolidated governments. The legislature may also provide by general laws for the performance by county officers of certain municipal functions of incorporated cities when a majority of the electors of such city so determine.[20]

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[17] William O. Scroggs, "Parish Government in Louisiana," 47 *Annals of American Acad. of Pol. and Soc. Sci.* 39-47 (1913).

[18] *Const. of Mo.*, Art. IX, sec. 15.

[19] *Const. of Mich.*, Art. VIII, sec. 2; *Const. of Minn.*, Art. XI, sec. 2. The Michigan constitution of 1850 contained a provision for the separation of cities of over 20,000 population; in the constitution of 1908, the population was increased to 100,000, and separation was made more difficult by requiring the approval of the remainder of the county.

Counties have no jurisdiction over cities in Virginia. The cities elect officers who perform duties assigned to county officers; cities thus combine city and county functions.

A constitutional amendment was adopted in Georgia in 1924, authorizing the consolidation of city and county governments in counties containing a city with a population of 52,900 or over. The amendment provides that the General Assembly may consolidate and combine all governmental functions and powers now vested in and exercised by cities and municipalities having such population with the governmental functions and powers now vested in and exercised by the authorities of the county in which such cities are situated. Such authority and power may be vested in such subdivisions as may be conferred upon municipalities or counties or both under existing laws. Any or all offices existing under the charters of any such municipalities and the offices of tax collector and tax receiver may be abolished and new offices created for the purpose of exercising and carrying out the powers to be vested in such political subdivisions.[21]

City-county consolidation has recently received serious consideration in certain cities; and in other cities it is an important issue at the present time. An interesting effort was made at city-county consolidation in the case of the city of Butte and Silver Bow county in Montana a few years ago.[22] The city of Butte comprised over two-thirds of the total population of the county, which was just above 60,000; and within a radius of five miles of the center of the city lived 97½ per cent of the population of the county. To avoid duplication of functions and unnecessary governmental costs an attempt was made to consolidate the city and county governments. A constitutional amendment was adopted in 1922 empowering the state legislature to consolidate or merge cities and towns and counties under one municipal government.[23] No such consolidated government was to be effective until submitted to the qualified electors in the territory affected and by them approved. A local committee was organized, which, after a study of the situation, prepared a measure for passage by the state legislature. This was passed in the form of a special act for Silver Bow county. The act is considered to be a model of city county consolidation, the proposed unified government being of the commission manager type. At a special election in May, 1924, however, the charter was defeated by about six hundred votes.[24]

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[20] *Const. of Calif.*, Art. XI, secs. 6-7. The home rule charter adopted in Los Angeles county consolidated the offices of city and county assessor, city and county tax collector, city and county treasurer. In these cases the county officer acts *ex officio* in the capacity of the city officer. L. H. Joachim, ''Dollars Speak in City and County Consolidation,'' 23 *American City* 639 (1920); *ibid.*, vol. 24, p. 67 (1920).

[21] *Ga. Code*, 1926, sec. 6595 (1).

[22] A. R. Hatton, ''The Butte-Silver Bow County Consolidated Charter,'' 12 *Nat. Mun. Rev.* 310-317 (1923).

To meet the situation in the case of several Ohio cities, and especially in Cleveland and Cuyahoga county, an attempt has been made to secure a constitutional amendment permitting city-county consolidation. A resolution providing for a constitutional amendment permitting counties with a city of over one hundred thousand to reorganize and consolidate the local governments within the county or any part of it passed the Senate at the 1917 session but was defeated in the House. At the 1919 session a similar county home rule amendment was proposed which provided that any county with a population of over 200,000 might provide by charter for the abolition of any or all existing governments within its boundaries. It might provide by charter, in place thereof, a unified government over the entire county. It was necessary that the charter provide for the establishment of such local districts or boroughs for administrative and self-governing purposes, or for assessment and taxation purposes, or for both, as might be deemed convenient and equitable. Any government thus established was to have the powers and privileges granted to municipalities and counties under the constitution. This amendment looked further than to city-county consolidation; it looked to the abolition of any or all existing governments within the county. It would thus have been possible to solve the metropolitan area problem as well as that of city-county consolidation. This amendment, however, also failed of

[23] See 12 *Nat. Mun. Rev.* 42 (1923).

[24] 13 *Nat. Mun. Rev.* 390 (1924).

passage. An unsuccessful effort was again made at the 1929 session to secure the passage of a constitutional amendment which would have authorized regional government.[25]

Plans for the consolidation of city and county governments have also been formulated in Alameda county, California,[26] and Multnomah county, Oregon. The Alameda plan involved several cities, among them Oakland, Berkeley, and Alameda. In the case of Multnomah county, a consolidated and unified government was sought for the county and the city of Portland. Both plans were defeated when submitted to the voters.

Pittsburgh has attempted recently to secure city-county consolidation, and an improved system of government for the metropolitan region. That there is need of consolidation and simplification is indicated by the existence within the county of Allegheny of a total of 124 separate municipal units (exclusive of school districts). These include the city of Pittsburgh, three cities of the third class, sixty-six boroughs, and fifty-four townships. A constitutional amendment was adopted by the voters of that state in 1928 which authorized the General Assembly to provide for the consolidation of the local governments in Allegheny County.[27] Subject to certain limitations the consolidated government was to exercise such powers as might seem desirable. But the amendment provided that the present cities, boroughs, and townships must be continued as municipal divisions of the consolidated city; and certain powers were specifically reserved to these divisions by the constitutional amendment. Any plan proposed by the legislature was not to become effective until approved by a majority vote in the county as a whole and a two-thirds majority vote in a majority of the 124 civil divisions of the county.

The amendment looked to a federal system of government for the metropolitan region. The management of affairs common to the whole region would be delegated to the central government having jurisdiction over the entire area; and there would be reserved to the existing cities, boroughs, and townships, power in matters of local interest and concern.[28]

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[25] See: C. A. Dykstra, ''Cleveland's Effort for City-County Consolid tion,'' 8 *Nat. Mun. Rev.* 551 (1919); *Ill. Const. Conv. Bull.*, 1920, pp. 975-976; Leyton E. Carter, ''Progress Toward Metropolitan Government in Cleveland and Cuyahoga County,'' 18 *Nat. Mun. Rev.* 464 (1929).

[26] E. W. Williams, ''The Defeat of City-County Consolidation in Alameda,'' 11 *Nat. Nat. Mun. Rev.* 204 (1922). A new charter was adopted in Alameda county in 1927 but it did not provide for city-county consolidation. Paul M. Cuncannon, ''The New Charter of Alameda County, California,'' 23 *Amer. Pol. Sci. Rev.* 124 (1929).

[27] See *Laws of Pennsylvania*, 1927, pp. 1051-1054 for this amendment.

A charter providing for a consolidated system of government, based on the federal principle was prepared for the metropolitan region, the new area to be known as the "City of Pittsburgh." A board of seven commissioners elected at large was to be provided for the federated community. Three of the commissioners would have come from the present city, three from districts outside, and one could have resided anywhere in the consolidated region. The consolidated city would have had all powers of the former county, the right to make health regulations, regulate smoke, designate and maintain through streets and regulate traffic thereon, zone, create special taxing districts for the operation of public utilities, construct such public works by special assessments on the district plan, provide a water supply, construct and operate transportation systems, and maintain a police force.

The charter was defeated at an election in June, 1929. While it received a majority vote in Pittsburgh, in the county outside, and in a majority of the smaller districts, it did not receive the necessary two-thirds vote.

Other cities in which there has been serious consideration of city-county consolidation are Jersey City, Detroit, Toledo, Milwaukee, Wichita, Dallas, and Seattle.[29] In each case there is a feeling that the duplication of effort and conflict of authority and jurisdiction is extravagant and inefficient. The advantages of such consolidation have been summarized by the Voters' League of Milwaukee as follows: "There is little reason why the city and county should have separate independent police and health departments, election and civil service commissions, sewage systems and city-planning organizations, or why city water facilities should not be supplied to territory adjacent to the city. Such consolidation would eliminate duplicate governmental organizations, centralize authority and responsibility, equalize and reduce governmental costs and fuse conflicting policies and standards of work. Such consolidation must ultimately come by the merging of city government into the county.''

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[28] Joseph T. Miller, "Pittsburgh Plan of City-County Consolidation," 21 *Amer. Pol. Sci. Rev.* 365-69 (1927); Rowland A. Egger, "City-County Consolidation in Allegheny County, Pennsylvania," 23 *Amer. Pol. Sci. Rev.* 121 (1929). Also see Thomas H. Reed, "Taxation in the Proposed Metropolitan Government of Pittsburgh," 18 *Nat. Mun. Rev.* 385 (1929).

[29] See: 12 *Nat. Mun. Rev.* 156 (1923); *ibid.*, 691 (1923); 13 *Nat. Mun. Rev.* 454 (1924); 21 *Amer. Pol. Sci. Rev.* 362 (1926).

It has been stated that the results of city-county consolidation in the United States have been ''economies, efficiency, simplification, and responsiveness of government.''[30] The City-County Committee of the American Political Science Association in its report of 1913 recommended that ''a standard be adopted for each of our states whereby a city, upon attaining a given population, dependent upon the needs of each of the states, shall automatically become a county-city with powers of both a municipality and a county, with coterminous boundaries, a single legislative body, and a centralized executive.'' This recommendation is an application to such cities of the plan of the county borough in England;[31] and it also incorporates the principle now followed in Virginia for all cities.

The committee recommended that for the consolidated city county there be a small single body elected at large. This body should have all legislative powers both for the city and the county. ''But their power and authority should end there. The responsibility for administration should be vested solely in the administrators, preferably in a single elective or appointive official.'' In cities of large size, and certainly in those of over one million population, the committee was unanimously of the belief that the mayor should be elective and all appointive power centered in him. But for cities of smaller size the committee stated that ''it would no doubt be better if the responsible administrative official were appointed rather than elected,'' and known by some such title as county manager.

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[30] 8 *Amer. Pol. Sci. Rev.* 287 (1914). Cf. George C. Sikes, ''The Advantages of City and County Consolidation,'' 21 *American City* 260 (1919); Leo H. Joachim, ''Dollars Speak in City and County Consolidation,'' 23 *American City* 639 (1920); *ibid.*, vol. 24, p. 67 (1920).

[31] County boroughs were provided for in England by the local government act of 1888. The Ministry of Health might, after enquiry, make any municipal borough with a population of 50,000 or more a county borough. The organization of the old borough council is not changed, the town council merely performing the functions which were formerly carried out by the county council. About eight-five such county boroughs are found in England and Wales. Since 1923 new county boroughs are established only by private act. The same principle is followed in Germany in the city circle. Cities of over 25,000 population are combined with that of the circle, which corresponds to the American county, and the municipal authorities exercise the powers of circle as well as municipality. W. B. Munro, *Government of European Cities* (rev. ed.), pp. 24-25; T. H. Reed, *Municipal Government in the United States*, p. 364; *Ill. Const. Conv. Bull.*, 1920, 976-978.

The experience with city-county consolidation and city-county separation in the United States, and the failure of recent plans indicates that there are serious difficulties in these methods; and it may be suggested that no single solution will be the best when applied to all the varying conditions in different communities. In some cases it seems clear that the extension of municipal boundaries to include the whole county will be neither practicable nor advisable. Where the county contains a large rural area not likely to become built up as a part of the urban community, it will not be desirable to bring it under the control of a consolidated urban government. In some cases, too, the county may not include an important part of the urban area which should be combined in a comprehensive scheme of government. Moreover, there will often be objections on the part of those living outside the central city, and where, as is usual, a favorable vote is required on the part of those living without as well as those within the city, the plan will be defeated.

The separation of the city from the county and the performance by it of county functions is somewhat less difficult. The problems to be solved are not so complicated as those where the consolidated government will serve both an urban and a semi-urban or rural area. But this is also likely to be opposed by those in the county outside the city, who may prefer the existing county government while objecting to a consolidated city government.

Furthermore the separation of a large city from the county fails in a larger degree than city-county consolidation to solve the problem presented by the metropolitan area. A serious difficulty is the extension of the municipal boundaries to include surrounding urban areas as the city grows. The experience of St. Louis illustrates this difficulty. Baltimore, on the other hand, has been more successful in this regard, the area of the city being almost doubled in 1888. Thus plans for city county consolidation or separation may deal with only parts of the larger problem of governing large urban communities.

METROPOLITAN REGIONS

City-county consolidation is merely one phase of the problem of the metropolitan region. It is one of the features of plans ''for fundamental reorganization calculated, not to guarantee good government, but to facilitate the efforts of local communities to function more efficiently."[32]

While the consolidation of the city and county governments will tend to prevent conflict of jurisdiction and duplication of effort as between the two units, there is the further question of the best solution of the problems arising from the existence of several suburban or satellite cities and other governmental units in the metropolitan area which are politically independent of the central city. There are problems which are common to this whole area but which cannot be disposed of satisfactorily by the independent action of the cities and other local governments concerned. Such questions as water supply, sewage disposal, law enforcement, and city planning can be met satisfactorily only by common, coöperative or united effort of the whole area.

One method of dealing with the problems of a metropolitan or urban region has been by the creation of special districts for dealing with one or more problems common to the whole area. In some cases this has led to a federal system of local government, one authority dealing with problems for the whole region, with minor authorities for smaller districts within the larger area.[33]

For the metropolitan area around the ancient city of London there was established in 1828 a metropolitan police district and later a metropolitan board of works. In 1888 the County of London was organized, which took over the functions of the board of works and was granted other powers over the metropolitan area, within which twenty-nine metropolitan boroughs and cities deal with local affairs under a federal plan. But the metropolitan area now extends beyond the county; and other special authorities have been established for the management of water supply, port and harbor facilities, and traffic problems, over areas larger than the county.

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[32] George C. Sikes, "Consolidation Problems in California," 7 *Nat. Mun. Rev.* 163 (1918). Also see on the government of metropolitan areas: Chester C. Maxey, "The Political Integration of Metropolitan Communities," 11 *Nat. Mun. Rev.* 229-253 (1922); Joseph A. Cohen, "London's Metropolitan Government," 14 *Nat. Mun. Rev.*, 463 (1925); *ibid.*, 542 (1925); T. H. Reed, *Municipal Government in the United States*, ch. 18; W. B. Munro, *Government of American Cities*, ch. 24; Chester C. Maxey, *Readings in Municipal Government*, ch. 6; William Anderson, *American City Government*, pp. 96-102; A. C. Hanford, *Problems in Municipal Government*, pp. 131-146; T. H. Reed and Paul Webbink, *Documents Illustrative of American Municipal Government*, Part xii.

[33] See T. H. Reed, *Municipal Government in the United States* (1926), pp. 356-62, for the use of *ad hoc* authorities in the case of metropolitan areas; *Ill. Const. Conv. Bull.*, 1920, pp. 923-25.

The city of Vienna has had a federal scheme of local government for many years; and the government of greater Berlin, as extended in 1920, is organized on a similar plan. The city of Paris is divided into twenty districts for administrative purposes.

In the metropolitan region of New York, a metropolitan police district was established before the Civil War; and later a metropolitan health district was organized. The first bridge across the East River was built and managed by a joint New York and Brooklyn Bridge Commission. These special bodies were afterwards discontinued; and in 1898 the boundaries of New York City were extended to include the urban area within the state of New York, within which five boroughs were provided, each with a borough president with limited powers over local improvements. But new special authorities have been set up in recent years. A joint commission had charge of the construction and management of the Hudson River vehicular tunnel. In 1921 a New York Port Authority was created with jurisdiction over an area of 1,500 square miles, with a population of over eight million. These bodies were created by agreements between the states of New York and New Jersey. A New York regional plan commission has also been organized, to develop a comprehensive plan of regional development by cooperation between the various local authorities.

For the metropolitan area of Eastern Massachusetts the special district plan has been applied. This region includes about forty municipalities, with less than half of the total population (1,800,000 in 1920) in the city of Boston, all of one county and parts of four others. In 1889 a metropolitan sewerage district was created; in 1891 a metropolitan park commission; and in 1895 a metropolitan water board. In 1918 a metropolitan district commission was created, which combines the functions of these authorities, and also has duties in connection with planning the development of the metropolitan region. The governing authority of this district is a board of five members appointed by the governor of the state. Other special authorities are a rapid transit commission, a police commissioner for Boston (appointed by the governor) and a state fire prevention commissioner. Proposals for the organization of a metropolitan county, something like the County of London, have been made; but as yet no action has been taken.

Special districts have also been established for the metropolitan area centering about Chicago. Before 1870, three park districts were established, each partly within and partly outside the city. With the extension of the city limits these park district areas have been included within the area of the city; but the special park boards remain independent of the city government; and a considerable number of smaller park boards have been established both within and outside of the city. Plans for uniting the management of the parks within the city, and for linking this management with the city government have been proposed, but have thus far failed of adoption.

In 1900 the Sanitary District of Chicago was created to deal with the problem of sewage disposal for the metropolitan area. This district now includes the entire area of Chicago and about an equal area outside of the city, a total of 400 square miles, with 97 per cent of the population of Cook county. The governing body is a board of nine trustees, elected at large by the voters of the district.[34]

But the local government of the Chicago metropolitan area remains a highly complex affair. Within the city of Chicago there are no less than 38 local governments, most of them independent of each other. Outside the city and within the sanitary district there are 162 other local governments. Beyond the sanitary district there are 192 additional local governments within Cook county. Altogether there are 392 separate agencies of local government in Cook county, including 38 towns, 9 cities, 67 villages and two incorporated towns.[35]

Still further, there are many suburban villages in Lake and DuPage counties; while in Lake county, Indiana, is another congeries of urban communities, including the cities of Gary, Hammond and Whiting, which form part of the metropolitan community.

California, by act of 1921, has provided for the creation of public utilities districts by which a municipality and unincorporated territory or two or more municipalities may organize and incorporate as a municipal utility district for the purpose of owning operating and controlling public utilities. This district is governed by a board of five directors elected by wards or subdistricts.[36] At least one such district, consisting of nine cities, has been created.

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[34] A number of other sanitary districts and park districts have been established in other parts of Illinois for smaller urban communities.

[35] *Ill. Const. Conv. Bull.*, 1920, pp. 922 ff. On the situation in Cook county see the following reports published by the Chicago Bureau of Public Efficiency: *Park Governments of Chicago* (1911); *Nineteen Local Governments in Chicago* (1913); *Unification of Local Governments in Chicago* (1917); F. D. Bramhall, "Cook County and Chicago," 8 *Proceedings Amer. Pol. Sci. Assoc.* 89-96 (1912).

These cases indicate the use of special districts to deal with problems which are common to a metropolitan region and which cannot be met by the independent action of the different governmental authorities in the region. But it may be suggested that they offer only a temporary remedy which may deal with a pressing problem for a time. It seems clear that the multiplication of such districts for particular purposes adds to the complexity of local government; and that there is need for a more comprehensive method of dealing with the problems as a whole.

While annexation or city-county consolidation offers a solution of the problem of large metropolitan regions, it is often impracticable since it will in most cases be opposed by the suburbs which it is proposed to unite. In some cases this opposition will be based on a possible higher tax rate; in others on fear of poorer municipal services as schools, local improvements, fire and police protection; and in others it is largely a question of civic pride. So even though this solution may be desirable, the residents of the suburbs "can scarcely be expected to welcome reabsorption into the mass they have tried to escape. The day when the metropolitan problem could be solved by annexation is past." [37]

Not only is annexation and the creation of a unified government difficult to secure, but its desirability has been questioned. It is urged that there is a limit to the successful bigness of a city. "Once a size has been attained, at half a million, or a million, where the substantial economies of large-scale purchasing and organization have been reached, further bigness only hampers administration. A great city loses in the increasing impersonality of all its efforts more than it gains by the large scale of its operations." It has been suggested that the problem be met by the creation of *regions*, which would be "communities with common interests." The federal plan of government would be applied to this region to determine the relationship between the government of the regional unit and the existing units of government within the region. Under this plan problems common to the whole area would be under the control of a governmental authority having jurisdiction over the whole metropolitan area or community with common interests. Among the questions over which it would have control would probably be city planning, transportation, health, sanitation, water supply, and sewage disposal. Questions which could be met by the independent action of the governmental units in the federation would be reserved to them.[38]

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[36] T. H. Reed and Paul Webbink, *Documents Illustrative of American Municipal Government* (1926), pp. 544-51.

[37] T. H. Reed, "The Region, A New Governmental Unit." 14 *Nat. Mun. Rev.* 417 (1923). Cf. G. D. H. Cole, *The Future of Local Government* (1921).

Another method of partially meeting the problems which are common to the metropolitan area is to give the central city jurisdiction beyond its borders and over the metropolitan region for certain functions. Thus the city of Baltimore has been given power to prevent the introduction of contagious or infectious diseases within three miles of the city on land or fifteen miles on water. The city of Chicago has power to regulate noxious trades within one mile of the city. The governing authorities of all cities in Illinois may suppress houses of ill-fame or assignation within three miles of the outer boundaries of the city. Cities in Indiana have been given jurisdiction for ten miles beyond their boundaries for the protection of watercourses and to keep the streams from becoming polluted; and they have jurisdiction for four miles beyond their borders to regulate the location of certain industries, to prevent the deposit of garbage and other waste material, to abate nuisances, to regulate the location of cemeteries, to establish quarantine regulations, and to preserve peace and good order and to prevent vice and immorality. In 1911 the legislature of North Carolina provided that all ordinances of the city of Greensboro enacted ''in the exercise of police powers given to it for sanitary purposes or for the protection of the property of the city'' should extend to all territory within one mile of the city limits. Cities in Texas were given the authority, by an act of 1925, to control the plotting of surrounding territory within five miles of their corporate limits.[39]

[38] Cf. Report of the Chamber of Commerce of the United States on the *Municipal Annexation of Land* (Washington, 1926).

[39] H. B. Woolston, ''Municipal Zones,'' 3 *Nat. Mun. Rev.* 465-73 (1914); William Anderson, ''The Extraterritorial Powers of Cities,'' 10 *Minn. Law Rev.* 475-497; *ibid.*, 564-83 (1926); ''Extraterritorial Powers of Cities,'' 41 *Harvard Law Rev.* 894 (1928); *Burns' Ind. Stat.*, 1926, vol. 3, sec. 10284, (9)–(17), (47)–(48); *Cahill's Ill. Rev. Stat.*, 1927, ch. 24, sec. 65 (45); *Private Laws of S. C.*, 1911, ch. 2, sec. 27; *State v. Rice*, 74 S.E. (N. C.) 582 (1912); *Gen. and Spec. Laws of Texas*, 1927, ch. 231.

Virginia provides still another method by which the problem of the urban region surrounding a central city may be met. Boards of supervisors in that state, in counties adjoining and abutting a city with a population of 125,000 or more inhabitants are vested with the same powers and authority as may be exercised by city councils. Under this provision county boards in such counties may make uniform rules on questions over which city councils usually exercise control, such as health and sanitation and police regulations. Other statutory provisions authorize boards of supervisors in some counties to furnish street lighting and water.[40]

Coöperation may also be used to meet the problem of the metropolitan region. A few cases where provision for such coöperation is made may be noted. There are some cases of city county coöperation in the maintenance of public buildings, as jails, courthouses and city halls. Chicago and Cook county maintain a court house and city hall in a single building as a joint enterprise. The joint city hall and court house for St. Paul and Ramsey county also illustrates such coöperation. In California, counties and cities may enter into an agreement by which county officers or other employees of county health departments may perform any or all functions relating to public health in the city. The city is authorized to pay the county such amount as may be agreed upon for such services.

County, regional or rural planning commissions have been authorized in several states. Wisconsin in 1923 empowered the county park commissioners in a county with over 150,000 population (Milwaukee county) to prepare regional plans for the territory within the county, but outside any city or village, to become effective when approved by the town boards. Later acts provide for rural planning commissions in any county, and confer zoning powers on county boards.[41] New York in 1925 authorized any county or counties, and the cities, towns and villages therein, to establish regional planning boards. In New Jersey boards of chosen freeholders have been given power to prepare and adopt a plan for the systematic development of the county.[42]

Ohio authorizes county commissioners to appoint county planning commissions; and regional planning commissions may be established for one or more counties and municipalities. Illinois has provided for regional planning commissions for one or more counties. In Michigan town plots must be approved by a county plot board. California authorized counties to create planning commissions and to establish a master plan.[43]

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[40] *Va. Code of 1924,* secs. 2742a, 2743a; *Acts of 1926,* p. 486.

[41] *Wis. Stat.,* 1925, vol. 1, secs. 59.97, 97.17, 236.04; *Laws,* 1923, ch. 152; 1925, ch. 388; 1927, chs. 375, 408; 1929, chs. 279, 356.

[42] *Laws of New York,* 1925, vol. 2, p. 880; *Cum. Supp. to N. J. Stat.,* vol. 1, secs. 48–1601-03.

Regional planning commissions have been officially or voluntarily created in a number of metropolitan and other urban areas.[44] In some of these cases the plans are unofficial, the object being to help the various governing bodies of the region to coöperate and work out a unified plan. The regional planning commission which was established in Los Angeles county, California, in 1923, has been said to be the first *official* regional planning commission in the United States. Official planning commissions have also been established for the Niagara frontier, Lucas county (Toledo) Ohio, Santa Barbara county, California, and the District of Columbia. Regional plans are under way in Boston, Chicago, Cleveland, the District of Columbia, Detroit, Milwaukee, New York City, Pittsburgh, Philadelphia, St. Paul and Minneapolis, Albany, Syracuse, Toledo, Los Angeles, and San Francisco. The ''Regional Planning Federation of the Philadelphia Tri-State District'' comprises 357 governmental units; the ''Capital District Planning Association'' in New York covers three counties; the ''Regional Plan of New York and its Environs'' covers the metropolitan area; and the ''Chicago Regional Planning Association'' extends its activities to the whole metropolitan region, including sections of Indiana and Wisconsin.

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[43] *Page's Ann. Ohio Gen. Code, 1926,* sec. 4366-13-15; *Ill. Laws, 1929,* p. 308; *Mich. Public Acts, 1927,* No. 260; *Stat. of Cal., 1927,* ch. 874.

[44] Theodora Kimball Hubbard, ''Brief Review of City and Regional Planning in the United States, 1925,'' 15 *Nat. Mun. Rev.* 342 (1926); Arthur C. Comey, ''The New York Regional Plan an Accomplished Fact,'' 18 *Nat. Mun. Rev.* 435 (1929); 17 *Nat. Mun. Rev.* 360 (1928); *The Regional Planning Commission, County of Los Angeles* (January, 1929); Thomas Adams, *Regional Planning in the United States* (Amer. Civic Assoc., 1929); Charles H. Diggs, ''The County as a Planning Unit,'' Nat. Conference on City Planning, 1929, p. 49.

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